

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE) C-11-02509 LHK
ANTITRUST LITIGATION,)
) SAN JOSE, CALIFORNIA
)
) JUNE 4, 2012
)
-----)
) PAGES 1-83
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
-----)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: SAVERI LAW FIRM
BY: JOSEPH R. SAVERI
255 CALIFORNIA STREET, SUITE 459
SAN FRANCISCO, CALIFORNIA 94111

LIEFF, CABRASER,
HEIMANN & BERNSTEIN
BY: KELLY M. DERMODY
ANNE B. SHAVER
DEAN M. HARVEY
275 BATTERY STREET, 30TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

APPEARANCES (CONTINUED)

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FOR DEFENDANT KEKER & VAN NEST
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FOR DEFENDANT MAYER BROWN
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FOR DEFENDANTS JONES DAY
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FOR DEFENDANT BINGHAM MCCUTCHEN
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1117 S. CALIFORNIA AVENUE
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FOR DEFENDANT COVINGTON & BURLING
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SAN JOSE, CALIFORNIA

JUNE 4, 2012

P R O C E E D I N G S

(WHEREUPON, COURT CONVENED AND THE
FOLLOWING PROCEEDINGS WERE HELD:)

THE COURT: OKAY. SO WE'RE HERE FOR A
CASE MANAGEMENT CONFERENCE.

OH, I'M SORRY. GO AHEAD AND CALL THE
CASE. SORRY ABOUT THAT.

THE CLERK: CALLING CASE NUMBER C-11-2509
LHK, IN RE: HIGH TECH EMPLOYEE ANTITRUST
LITIGATION.

COUNSEL, STATE YOUR APPEARANCES, PLEASE.

MR. SAVERI: GOOD AFTERNOON, YOUR HONOR.
JOSEPH SAVERI, SAVERI LAW FIRM, ON BEHALF OF THE
PLAINTIFFS.

MS. DERMODY: GOOD AFTERNOON, YOUR HONOR.
KELLY DERMODY WITH LEIF CABRASER. WITH ME FROM MY
FIRM ARE DEAN HARVEY AND ANNE SHAVER FOR THE
PLAINTIFFS.

THE COURT: OKAY.

MR. TUBACH: GOOD AFTERNOON, YOUR HONOR.
MICHAEL TUBACH ON BEHALF OF APPLE.

THE COURT: OKAY. GOOD AFTERNOON.

MR. RILEY: GOOD AFTERNOON, YOUR HONOR.
GEORGE RILEY ON BEHALF OF APPLE.

1 THE COURT: GOOD AFTERNOON.

2 MR. KIERNAN: GOOD AFTERNOON, YOUR HONOR.
3 DAVID KIERNAN ON BEHALF OF ADOBE AND ON BEHALF OF
4 INTUIT.

5 THE COURT: OKAY. GOOD AFTERNOON.

6 GIVE ME ONE SECOND TO JUST -- OKAY.
7 THANK YOU.

8 MR. HINMAN: GOOD AFTERNOON, YOUR HONOR.
9 FRANK HINMAN REPRESENTING INTEL.

10 THE COURT: OKAY. GOOD AFTERNOON.

11 MR. PURCELL: DAN PURCELL FROM
12 KEKER & VAN NEST REPRESENTING LUCASFILM.

13 THE COURT: OKAY. THANK YOU.

14 MS. HENN: GOOD AFTERNOON, YOUR HONOR.
15 EMILY HENN FROM COVINGTON & BURLING REPRESENTING
16 PIXAR.

17 THE COURT: OKAY. GOOD AFTERNOON.

18 MR. RUBIN: AND LEE RUBIN FROM
19 MAYER BROWN REPRESENTING GOOGLE.

20 THE COURT: OKAY. GOOD AFTERNOON.

21 MR. RUBIN: GOOD AFTERNOON.

22 THE COURT: OKAY. SO WE'LL BE DOING BOTH
23 THE CASE MANAGEMENT CONFERENCE, AS WELL AS I'M
24 GOING TO RULE ON THE DISCOVERY ISSUE THAT WAS
25 DISCOVERY DISPUTE JOINT REPORT NUMBER 2 FOR

1 JUDGE LLOYD. OKAY?

2 ALL RIGHT. LET ME FIRST HEAR FROM THE
3 PLAINTIFFS.

4 OF THE PLAINTIFFS' EMPLOYMENT HISTORY AND
5 RECORDS THAT I ORDERED ON APRIL 18TH OF 2012, WHAT
6 HAS BEEN PRODUCED?

7 BECAUSE BASED ON WHAT I'VE READ, NOTHING
8 HAS BEEN PRODUCED THAT I ORDERED ON APRIL 18TH. IS
9 THAT CORRECT?

10 MS. SHAVER: YOUR HONOR, THIS MORNING WE
11 PRODUCED TWO OF THE FIVE PLAINTIFFS' SUPPLEMENTAL
12 INTERROGATORY RESPONSES.

13 WE'RE WORKING TO GET THE OTHER THREE OUT
14 AS FAST AS POSSIBLE IN THE NEXT COUPLE OF DAYS.

15 AND WE'VE ALSO BEEN --

16 THE COURT: WELL, LET ME STOP YOU HERE A
17 SECOND, BECAUSE THIS IS JUNE 4TH. I ORDERED THAT
18 ON APRIL 18TH.

19 WHY DID YOU WAIT UNTIL I SET A CASE
20 MANAGEMENT CONFERENCE ON SHORT ORDER TO DO THAT?

21 MS. SHAVER: SURE, YOUR HONOR.

22 WE -- AFTER THE LAST CASE MANAGEMENT
23 CONFERENCE, WE MET AND CONFERRED WITH DEFENDANTS --

24 THE COURT: WHAT IS THERE TO MEET AND
25 CONFER ABOUT? I SAID PRODUCE IT.

1 MS. SHAVER: ABOUT THE SCOPE --

2 THE COURT: SO WHAT ARE YOU MEETING AND
3 CONFERRING ABOUT?

4 MS. SHAVER: ABOUT THE SCOPE OF
5 PRODUCTION AND WHAT TIME PERIOD THEY WERE
6 INTERESTED IN.

7 AND WE REACHED AGREEMENT ON --

8 THE COURT: I ALREADY RULED ON ALL OF
9 THAT ON APRIL 18TH. I SAID THE TIME PERIOD FROM
10 HIGH SCHOOL ON. I SAID ANY JOB, DELIVERING
11 NEWSPAPER.

12 I GUESS I DON'T UNDERSTAND. WHAT ARE YOU
13 MEETING AND CONFERRING ON IF I'VE ALREADY RULED ON
14 THIS?

15 MS. SHAVER: WE WERE MEETING AND
16 CONFERRING ON THE SCOPE OF OUR RESPONSES TO THEIR
17 INTERROGATORY REQUESTS.

18 THERE WERE A NUMBER OF --

19 THE COURT: OKAY. WHY DIDN'T YOU AT
20 LEAST PRODUCE THE RESUMES? I ALREADY TOLD YOU,
21 WHATEVER YOU HAVE OF THESE PLAINTIFFS' RESUMES,
22 EMPLOYMENT RECORDS, I ORDERED THAT PRODUCED. OKAY?

23 I'M NOT TALKING ABOUT AN INTERROGATORY
24 RESPONSE. I SAID THEIR C.V.S, WHATEVER YOU HAVE,
25 PRODUCE IT.

1 AND YOU'RE TELLING ME THAT HAS NOT BEEN
2 PRODUCED YET ON JUNE 4TH, DESPITE MY APRIL 18TH
3 ORDER?

4 IS THAT YES OR NO?

5 MS. SHAVER: THAT'S CORRECT.

6 THE COURT: AND THEN YOU COME IN HERE
7 ASKING FOR A FOUR MONTH EXTENSION OF A SCHEDULE
8 THAT I SET BACK ON OCTOBER 26TH, WITH YOUR CONSENT,
9 WHICH YOU REAFFIRMED ON JANUARY 26TH AND ON
10 APRIL 18TH.

11 MR. SAVERI: YOUR HONOR --

12 THE COURT: SO TELL ME WHY I SHOULD DO
13 THAT WHEN YOU HAVEN'T EVEN COMPLIED WITH MY ORDER
14 OF APRIL 18TH ON SOME VERY BASIC INFORMATION, THE
15 C.V.S OF THE LEAD PLAINTIFFS IN THIS CASE.

16 MR. SAVERI: WELL --

17 THE COURT: I MEAN, WAS THERE ANYTHING
18 UNCLEAR ABOUT WHAT I ORDERED ON APRIL 18TH AS TO
19 THE LEAD PLAINTIFFS?

20 MR. SAVERI: I --

21 THE COURT: TELL ME WHAT WAS UNCLEAR THAT
22 YOU NEEDED TO MEET AND CONFER ABOUT AND THAT LED
23 YOU TO BELIEVE THAT I DIDN'T ORDER PRODUCTION OF
24 RESUMES AND C.V.S.

25 MR. SAVERI: WE CAN TALK ABOUT THE

1 INTERROGATORIES.

2 BUT IN TERMS OF THE DOCUMENTS --

3 THE COURT: NO. ANSWER MY QUESTION.

4 WHAT WAS UNCLEAR ABOUT WHAT I HAD ORDERED ON
5 APRIL 18TH ABOUT PRODUCING THE C.V.S AND THE
6 RESUMES AND THE EMPLOYMENT HISTORIES OF THE LEAD
7 PLAINTIFFS?

8 MR. SAVERI: YOUR HONOR, THERE WAS
9 NOTHING UNCLEAR ABOUT THAT.

10 THE COURT: OKAY. SO THEN WHY DIDN'T YOU
11 DO IT?

12 MR. SAVERI: YOUR HONOR, IT'S -- WE --
13 THERE'S NO GOOD REASON FOR OUR DELAY, OTHER THAN
14 WHEN WE WENT TO THE PLAINTIFFS, WE WANTED TO TRY TO
15 GET ALL THE INFORMATION IN ONE, AT ONE TIME, AND IT
16 WAS PROBABLY A MISTAKE NOT TO GET, TO ROLL IT OUT
17 IN BITS AND PIECES AND TO GIVE IT TO THE DEFENDANTS
18 WHEN IT CAME IN.

19 THE COURT: SO LET ME ASK, IN THIS CASE,
20 WHAT DOCUMENTS -- GIVE ME THE BATES NUMBERS OF HOW
21 MANY DOCUMENTS HAVE THE PLAINTIFFS PRODUCED IN THIS
22 CASE.

23 MR. SAVERI: I --

24 THE COURT: IS IT ONE? WHAT'S THE BATES
25 NUMBER OF THE DOCUMENTS THAT THE PLAINTIFFS HAVE

1 PRODUCED IN THIS CASE?

2 MR. HARVEY: YOUR HONOR, THIS IS
3 DEAN HARVEY.

4 I DON'T HAVE THE PRECISE BATES RANGE WITH
5 ME TODAY.

6 THE COURT: UM-HUM.

7 MR. HARVEY: BUT I WOULD GUESS IT'S
8 APPROXIMATELY 40 TO 50 PAGES.

9 THE COURT: ALL RIGHT. THIS IS WHAT I
10 WANT YOU TO DO. I WANT YOU TO STEP OUTSIDE. I
11 WANT YOU TO CALL YOUR OFFICE.

12 ARE YOU FROM LEIFF CABRASER?

13 MR. HARVEY: YES.

14 THE COURT: YOU CALL SOME ATTORNEY THAT'S
15 IN THE OFFICE UP IN SAN FRANCISCO AND YOU TELL ME
16 WHAT THAT BATES IS. OKAY? AND THEN YOU CAN REPORT
17 TO ME DURING THIS CMC.

18 MR. HARVEY: OKAY.

19 THE COURT: OKAY? PLEASE STEP OUTSIDE.
20 I WANT THAT NUMBER.

21 DO YOU SEE WHY I'M FRUSTRATED? YOU FILED
22 SOMETHING THAT GOES ON AND ON ABOUT DEFENDANTS
23 HAVEN'T PRODUCED THIS, DEFENDANTS HAVEN'T PRODUCED
24 THAT, AND YOU'VE PRODUCED 40 PAGES? YOU HAVEN'T
25 EVEN PRODUCED WHAT I ORDERED YOU TO PRODUCE ON

1 APRIL 18TH. OKAY?

2 YOU GOT THE D.O.J. DOCUMENTS ON
3 NOVEMBER 30TH, AND I WOULD SUSPECT THAT THE
4 JUICIEST DOCUMENTS ARE GOING TO BE IN THAT D.O.J.
5 PRODUCTION.

6 I LIFTED THE STAY OF DISCOVERY ON
7 JANUARY 26TH, FIVE MONTHS AGO.

8 AND THEN I READ THIS SAYING, "OH, WE
9 NEED, LIKE, YOU KNOW, UNTIL OCTOBER 26TH TO FILE
10 OUR CLASS CERT MOTION," AND THEN YOU CAN'T EVEN
11 PRODUCE WHAT I ORDERED YOU TO PRODUCE ON
12 APRIL 18TH? THAT'S REALLY DISRESPECTFUL.

13 SO WHAT DO YOU HAVE TO SAY FOR YOURSELF?

14 MS. DERMODY: YOUR HONOR --

15 THE COURT: I'M REALLY NOT HAPPY, AT ALL.

16 MS. DERMODY: I'M SORRY, YOUR HONOR. IF
17 I MIGHT? KELLY DERMODY FOR THE PLAINTIFFS.

18 I ADMIT I'M A BIT NEW TO THIS EVENT, THIS
19 CASE, BUT I CAN SAY THAT WE APOLOGIZE TO THE COURT
20 FOR THAT DELAY AND WE WILL MAKE SURE THOSE RESUMES
21 GET OUT THIS WEEK. WE'LL MAKE THAT PRODUCTION
22 FORTHWITH.

23 THERE'S NOTHING MORE WE CAN SAY TO EXCUSE
24 THAT.

25 BUT I THINK THERE WAS SOME CONFUSION

1 ABOUT THE DEADLINE OF PRODUCTION BEING SOMEWHAT IN
2 ADVANCE OF -- OR FARTHER BACK FROM THIS DATE, AND
3 WE WERE WORKING TOWARDS THAT DATE WITH THE IDEA OF
4 GIVING DEFENDANTS ALL THE DOCUMENTS THEN,
5 RECOGNIZING THAT FOR THE DEFENDANTS --

6 THE COURT: BUT YOU EXPECT IT FROM THE
7 DEFENDANTS, TO DO A ROLLING PRODUCTION, AND TO GIVE
8 YOU THINGS IN APRIL AND IN MAY, BUT EVERYTHING OF
9 YOURS COULD WAIT UNTIL JUNE 15TH?

10 MS. DERMODY: YOUR HONOR, IF I MIGHT --

11 THE COURT: WHY IS THAT? THAT'S A DOUBLE
12 STANDARD. WHY IS THAT?

13 AND THEN YOU'RE GRIPING THAT IT'S
14 JUNE 4TH AND THEY HAVEN'T GIVEN YOU EVERYTHING
15 YOU'RE ENTITLED TO AS OF JUNE 15TH, THAT THEY
16 HAVEN'T GIVEN IT TO YOU BY JUNE 4TH, AND YOU'VE
17 PRODUCED --

18 TELL ME, WHAT WAS THE BATES NUMBER OF
19 WHAT THE PLAINTIFFS HAVE PRODUCED? MR. HARVEY,
20 WHAT WAS THE BATES NUMBER?

21 MR. SAVERI: IT'S -- THE LAST ONE IS 181.

22 THE COURT: OKAY. AND WHAT'S BEEN
23 PRODUCED SO FAR?

24 MR. HARVEY: THE DOCUMENTS DESCRIBED IN
25 DEFENDANTS' SECTION OF THE CASE MANAGEMENT

1 CONFERENCE, WHICH ARE LARGELY PUBLIC DOCUMENTS.

2 THE COURT: PUBLIC DOCUMENTS OF WHOSE?
3 THE DEFENDANTS' PUBLIC DOCUMENTS?

4 MR. HARVEY: DOCUMENTS THAT WERE FILED --

5 THE COURT: 10-K'S OR 10-Q'S? WHAT WAS
6 IT?

7 MR. HARVEY: DOCUMENTS THAT WERE -- THAT
8 WERE FILED IN THE DISTRICT COURT IN D.C., AS WELL
9 AS PUBLIC NEWS ARTICLES.

10 THE COURT: THAT'S THE ONLY THING THAT
11 THE PLAINTIFFS HAVE PRODUCED IN THIS CASE?

12 MR. HARVEY: THE ONLY DOCUMENTS, CORRECT.

13 MR. SAVERI: WE'VE ALSO THOUGH, YOUR
14 HONOR, WE HAVE -- THE DEFENDANTS DID -- ALMOST ALL
15 OF THE INFORMATION THAT IS --

16 THE COURT: WELL, THE FIRST COMPLAINT WAS
17 FILED IN STATE COURT ON MAY 4TH, SO WE'RE GOING ON
18 13 MONTHS FROM NOW, OKAY? CONSOLIDATED AMENDED
19 COMPLAINT FILED SEPTEMBER 13TH OF 2011.

20 SO YOU'RE TELLING ME, IN A CASE THAT IS
21 13 MONTHS OLD THAT YOU ALL INITIATED AS PLAINTIFFS,
22 THAT YOU HAVE PRODUCED A HUNDRED AND -- WHAT WAS
23 THE NUMBER? -- 181 PAGES OF PUBLIC DOCUMENTS AND
24 PRESS RELEASES?

25 AND THE PUBLIC DOCUMENTS BELONG TO WHOSE

1 FILINGS IN THE DISTRICT COURT ACTION? THE
2 DEFENDANTS'?

3 MR. SAVERI: NOT COMPLETELY, YOUR HONOR.
4 SOME OF THEM WERE THE DEFENDANTS' FILINGS.

5 SOME OF THE INFORMATION THAT WE PRODUCED
6 WAS MATERIAL THAT WE GATHERED IN CONNECTION WITH
7 THE FILING OF THE CASE, THE INVESTIGATION, AND SO
8 THAT -- SO THAT INFORMATION WAS NOT FROM THE
9 DEFENDANTS. IT WAS PUBLICLY AVAILABLE INFORMATION.

10 SOME OF --

11 THE COURT: SO WHAT WAS IT, FROM THE
12 D.O.J. AND FROM PRESS RELEASES?

13 MR. SAVERI: D.O.J., PRESS RELEASES.

14 THERE'S ALSO SOME INFORMATION, I BELIEVE,
15 THAT WE GOT FROM THE INTERNET OR KIND OF PUBLIC
16 SOURCES LIKE THAT, WHICH WE -- I MEAN, WE DIDN'T --
17 IN TERMS OF THAT FILE, I MEAN, WE PRODUCED THAT
18 RIGHT AWAY.

19 NOW, YOUR HONOR, I MEAN --

20 THE COURT: YES, BECAUSE IT'S
21 MEANINGLESS. THEY ALREADY HAVE THOSE DOCUMENTS.
22 THEY WERE LITIGANTS IN THE D.C. COURT ACTION. YOU
23 DON'T KNOW THEY ALREADY HAVE WHAT'S BEEN FILED IN
24 THE D.C. COURT ACTION?

25 MR. SAVERI: YOUR HONOR, WE -- LOOK,

1 FIRST, WE WANTED TO MAKE SURE THAT WITH RESPECT TO
2 ANY MATERIALS THAT WE HAD IN CONNECTION WITH THE
3 FILING OF THE CASE, WHETHER THEY WERE DEPARTMENT OF
4 JUSTICE MATERIALS OR OTHER THINGS THAT THE
5 ATTORNEYS GATHERED, THAT THOSE WERE PRODUCED EARLY
6 WITHOUT ANY, WITHOUT ANY PROBLEM.

7 WITH RESPECT TO THE PUBLIC -- THE
8 INFORMATION REGARDING THE CLIENTS, YOUR HONOR, WE
9 ANSWERED THE INTERROGATORIES THAT LARGELY PROVIDED
10 INFORMATION REGARDING THEIR EMPLOYMENT HISTORY, A
11 LOT OF INFORMATION THAT WE THINK IS BEYOND THE
12 SCOPE OF THE DISCOVERY IN THE CASE.

13 WE ARE GOING TO MAKE OUR PRODUCTION --
14 THE COURT: LET ME ASK YOU, LET ME ASK
15 YOU, WHAT DOES ROLLING PRODUCTION MEAN, SUBSTANTIAL
16 COMPLETION OF ROLLING PRODUCTION? DOES THAT MEAN
17 TO YOU THAT YOU ONLY ROLL ON JUNE 15TH?

18 MR. SAVERI: NO, ABSOLUTELY --

19 THE COURT: BECAUSE THAT'S WHAT IT'S
20 SOUNDING LIKE, THAT PLAINTIFFS THOUGHT YOU HAD
21 UNTIL JUNE 15TH TO PRODUCE PAGE 1 OF ANYTHING THAT
22 WASN'T ONE OF THE DEFENDANTS' PUBLIC DOCUMENTS.

23 MR. SAVERI: ABSOLUTELY NOT, YOUR HONOR.

24 WE BELIEVE THAT WHAT A ROLLING PRODUCTION
25 MEANS IS THINGS -- AS WE CAN GATHER THEM IN

1 MEANINGFUL CHUNKS, WE WILL TURN THEM OVER TO THE
2 DEFENDANTS.

3 AND, YOUR HONOR, YOU KNOW, JUST FOCUSSED
4 ON THE MATERIAL THAT WE'VE PRODUCED, I THINK WE'RE
5 A LOT CLOSER WITH OUR PRODUCTION RIGHT NOW TO
6 HAVING COMPLETED OUR PRODUCTION OF THE DOCUMENTS
7 THAN THE DEFENDANTS ARE WITH RESPECT TO THEIRS.

8 NOW, WE WILL COMPLETE OUR PRODUCTION
9 BEFORE THE DEFENDANTS PRODUCE THEIRS.

10 AND WHEN YOU ASK ME WHAT A ROLLING
11 PRODUCTION MEANS, I THINK ONE OF THE THINGS IS
12 THAT, THAT WE WILL PRODUCE OUR MATERIAL AND WE WILL
13 COMPLETE THE PRODUCTION OF THAT MATERIAL BEFORE THE
14 DEFENDANTS COMPLETE THEIRS.

15 SO WE PERHAPS HAVE NOT PRODUCED AT THE
16 SAME -- AT EXACTLY THE SAME RATES AS THE
17 DEFENDANTS, BUT IN TERMS OF THE PERCENTAGE OF
18 COMPLETION, TRUST ME, YOUR HONOR, WE WILL HAVE
19 THAT --

20 THE COURT: YES, BECAUSE YOU'RE GOING TO
21 HAVE, WHAT, 100 DOCUMENTS AT THE MOST?

22 MR. SAVERI: NO, YOUR HONOR.

23 THE COURT: MAYBE 100 PAGES AT THE MOST?

24 I MEAN, YOU KNOW, THAT ARGUMENT IS
25 COMPLETELY NOT PERSUASIVE, BECAUSE THE SCALE HERE

1 IS SO DIFFERENT.

2 YOU'RE ASKING FOR, WHAT, 12 YEARS OF DATA
3 ON ALL OF THE DEFENDANTS' EMPLOYEES, WHETHER
4 THEY'RE JANITORS, FACILITIES AND MAINTENANCE
5 WORKERS, WHETHER THEY'RE SECRETARIES, WHETHER
6 THEY'RE ENGINEERS, WHETHER THEY'RE EXECUTIVES.
7 YOU'RE ASKING FOR EVERYTHING.

8 YOU'VE GOT FIVE PLAINTIFFS AND SO FAR
9 YOU'VE ONLY COME UP WITH TWO INTERROGATORY
10 RESPONSES FOR TWO OUT OF THE FIVE AS OF JUNE 4TH,
11 AND I BET YOU IF I DIDN'T HAVE THE CASE MANAGEMENT
12 CONFERENCE TODAY, YOU WOULDN'T HAVE EVEN
13 SUPPLEMENTED THE INTERROGATORIES TODAY.

14 MR. SAVERI: YOUR HONOR, I DON'T THINK
15 IT'S USEFUL TO -- WE PRODUCED WHAT WE PRODUCED
16 TODAY, AND WE WILL COMPLETE OUR PRODUCTION BEFORE
17 THE DEFENDANTS COMPLETE THEIRS.

18 WE ARE ALSO GOING TO END UP GOING FARTHER
19 BACK IN TIME THAN THE DEFENDANTS BECAUSE, OF
20 COURSE, YOU HAVE SAID -- AND WE HEARD YOU WHEN YOU
21 SAID THAT -- THAT WE WERE GOING TO GO BACK FAR INTO
22 THE EMPLOYMENT HISTORIES, EVEN BEYOND THE 12 --

23 THE COURT: WELL, THEN, WHY ARE YOU
24 FIGHTING THEM? WHY ARE YOU FIGHTING THEM AND
25 SAYING, "NO, ONLY COLLEGE AND IT'S ONLY HIGH SCHOOL

1 IF IT'S RELEVANT TO THE CURRENT JOB"?

2 THAT'S NOT WHAT I SAID ON APRIL 18TH. SO
3 WHY ARE YOU LIMITING MY ORDER OF APRIL 18TH?

4 MR. SAVERI: YOUR HONOR, WE'RE GOING TO
5 COMPLY WITH YOUR ORDER. WE'RE GOING TO COMPLY.

6 AND WE HAVE -- WE RESPECTFULLY --

7 THE COURT: BY WHEN? BY WHEN? IT'S
8 JUNE 4TH. I ORDERED THAT ON APRIL 18TH AND YOU'RE
9 IN HERE WHINING AND CRYING ABOUT THE DEFENDANTS'
10 PRODUCTIONS IN APRIL AND MAY NOT BEING SUFFICIENT
11 AND YOU HAVEN'T EVEN PRODUCED ANYTHING OTHER THAN
12 PUBLIC DOCUMENTS AND DOCUMENTS FROM THE DISTRICT
13 COURT LITIGATION THAT THEY ALREADY HAVE. THEY WERE
14 ALREADY LITIGANTS IN THAT CASE.

15 MR. SAVERI: YOUR HONOR, OBVIOUSLY YOU'RE
16 RIGHT. WE WILL GET THAT PRODUCED AND WE WILL GET
17 IT PRODUCED BEFORE JUNE 15TH. IN FACT, WE'RE GOING
18 TO GET MOST OF IT PRODUCED IN THE NEXT WEEK OR SO,
19 BUT WE WILL ROLL THAT OUT.

20 AND YOU'RE RIGHT THAT THE PRODUCTION IS
21 GOING TO BE LESS FOR THE PLAINTIFF THAN THE
22 DEFENDANTS. YOU ARE RIGHT ABOUT THAT.

23 BUT WE WILL COMPLETE THAT PRODUCTION --

24 THE COURT: YOU'RE COMING IN HERE WITH
25 UNCLEAR HANDS. DO YOU KNOW THAT? YOU'RE COMING IN

1 HERE WITH UNCLEAN HANDS AND ASKING FOR THEIR
2 PRODUCTION TO BE EXPEDITED. IT'S NOT ENOUGH AND
3 YOU HAVEN'T EVEN PRODUCED ANYTHING BEYOND PRESS
4 RELEASES.

5 MR. SAVERI: YOUR HONOR, IF I MAY?

6 SO, YOUR HONOR, YOU'VE SET A JUNE 15TH
7 DEADLINE FOR THE COMPLETION OF THE PRODUCTION OF
8 DOCUMENTS IN THIS CASE, JUNE 15TH, AND WE'RE GOING
9 TO MEET THAT, AND WE'LL PROBABLY BEAT THAT.

10 THE COURT: SO WHY DIDN'T YOU TELL ME ON
11 APRIL 18TH, WHEN I MADE THAT ORDER, THAT YOU HAD NO
12 INTENTION OF COMPLYING WITH MY ORDER UNTIL
13 JUNE 15TH?

14 MR. SAVERI: BECAUSE, YOUR HONOR, THAT'S
15 NOT TRUE, AND IT WOULDN'T HAVE BEEN -- IT WOULD
16 HAVE BEEN UNTRUE IF I WERE TO HAVE SAID THAT
17 BECAUSE WE'RE, WE'RE GOING TO COMPLY WITH THE ORDER
18 AND DO IT IN A TIMELY MANNER.

19 AND WITH, WITH ALL RESPECT --

20 THE COURT: DO YOU THINK IT'S -- OKAY.
21 SO YOU THINK YOU'VE ALREADY BEEN TIMELY IN
22 COMPLIANCE WITH MY APRIL 18TH ORDER?

23 MR. SAVERI: NO, YOUR HONOR. I THINK WE
24 HAVE NOT PRODUCED IT IN AS TIMELY A MANNER AS WE
25 COULD HAVE OR SHOULD HAVE AND WE CERTAINLY COULD

1 HAVE DONE IT FASTER, AND WE WILL PICK UP THE PACE
2 AND WE WILL DO IT SOON.

3 AND IF YOU WANT SOME KIND OF COMMITMENT
4 FROM US, FROM US TO DO IT IN SOME SHORTER PERIOD OF
5 TIME --

6 THE COURT: WELL, I'M JUST NOT GOING TO
7 GIVE YOU AN EXTENSION ON YOUR CLASS CERT. EITHER
8 YOU'RE READY OR YOU'RE NOT.

9 YOU HAVE HAD D.O.J. DOCUMENTS SINCE
10 NOVEMBER 30TH. I LIFTED THE STAY OF DISCOVERY ON
11 JANUARY 26TH.

12 YOU HAVE PRODUCED NO DOCUMENTS BEYOND
13 PRESS RELEASES AND DISTRICT COURT LITIGATION
14 DOCUMENTS. OKAY?

15 SO I AM NOT PERSUADED BY YOUR CLAIM THAT
16 YOU NOW NEED UNTIL OCTOBER 26TH.

17 NOW, LET ME HEAR, WHAT AMOUNT OF THIS
18 DELAY THAT YOU NEED UNTIL OCTOBER 26TH TO FILE YOUR
19 CLASS CERT MOTION IS BECAUSE YOUR CLASS DEFINITION
20 IS INCLUDING EVERYONE, INCLUDING JANITORS,
21 FACILITIES MAINTENANCE PEOPLE, SECRETARIES,
22 EVERYONE, EVERYONE BEYOND SCIENTISTS AND ENGINEERS?

23 MR. SAVERI: YOUR HONOR, I THINK THAT
24 THERE'S A VERY LITTLE CONNECTION BETWEEN THOSE TWO
25 ISSUES, AND --

1 THE COURT: LET ME ASK FROM THE
2 DEFENDANTS, WHAT PERCENTAGE OF YOUR EMPLOYEES --
3 AND I'M SURE THE NUMBER IS GOING TO VARY, BUT GIVE
4 ME A RANGE -- ARE SCIENTISTS AND ENGINEERS VERSUS
5 ALL OF THE OTHER CATEGORIES OF EMPLOYEES? DO YOU
6 KNOW WHAT THAT RANGE IS?

7 MR. TUBACH: MICHAEL TUBACH, YOUR HONOR,
8 FOR APPLE.

9 I'M AFRAID I DON'T HAVE A PRECISE ANSWER
10 FOR YOU, BUT THEY'VE ASKED FOR EVERYBODY, SO WE'VE
11 GIVEN THEM EVERYONE. WE DIDN'T BREAK IT DOWN -- IN
12 THE DATA IT'S OBVIOUSLY BROKEN DOWN BY WHAT
13 EMPLOYMENT THEY HOLD, BUT WE HAVEN'T SEPARATELY
14 GONE BACK AND FIGURED OUT WHO'S AN ENGINEER, WHO'S
15 A SECRETARY, WHO'S A JANITOR.

16 THE COURT: OKAY.

17 MR. TUBACH: SORRY ABOUT THAT.

18 THE COURT: OKAY. LET ME HEAR FROM THE
19 PLAINTIFFS, WHAT IS YOUR EVIDENCE THAT THESE
20 BILATERAL AGREEMENTS PERTAINED TO ALL EMPLOYEES
21 BEYOND SCIENTISTS AND ENGINEERS?

22 MR. SAVERI: THE -- THE EVIDENCE THAT WE
23 HAVE, AND WE HAVEN'T COMPLETED -- THE DEFENDANTS
24 HAVE NOT COMPLETED THE PRODUCTION TO DATE, BUT THE
25 EVIDENCE THAT WE HAVE -- THE AGREEMENTS -- THE

1 EVIDENCE THAT WE HAVE SO FAR INCLUDES EVIDENCE THAT
2 THE AGREEMENTS WERE MARKET-WIDE.

3 AND ONE OF THE THINGS THAT WE WANT TO DO
4 WITH THE DATA, YOUR HONOR --

5 THE COURT: AND HOW DO YOU DEFINE THE
6 MARKET?

7 MR. SAVERI: THE MARKET -- ONE -- IT'S
8 ALL -- THE WAY WE DEFINED IT IN THE COMPLAINT IS
9 ALL SALARIED EMPLOYEES. WE DIDN'T -- WE EXCLUDED
10 EXECUTIVES, YOU KNOW, AND PEOPLE AT THE TOP OF THE
11 COMPANY.

12 ONE OF THE THINGS THAT WE NEED TO DO WITH
13 THE DATA IS TO ADD -- IS TO ADDRESS THE VERY
14 QUESTION YOU'RE ASKING, YOUR HONOR.

15 SO ONE OF THE THINGS THAT WE NEED TO DO
16 WITH THE DATA IS TO LOOK AT IT AND TO SEE WHAT
17 IMPACT AND TO SEE WHAT KIND OF MEASURE OF IMPACT ON
18 THE MARKET FOR EMPLOYEES FOR THESE COMPANIES THAT
19 THESE AGREEMENTS HAD.

20 AND THAT'S ONE OF THE THINGS WE'RE GOING
21 TO DO AT TRIAL. WE NEED TO GET THE DATA TO HELP
22 ADDRESS THE VERY SPECIFIC QUESTION YOU'RE ASKING,
23 WHICH IS, WHAT IS THE CLASS IN THIS CASE?

24 NOW, WHEN WE STARTED THE CASE, YOUR
25 HONOR, WE DIDN'T HAVE ANY ACCESS TO THAT DATA, OF

1 COURSE. WE BASED IT ON WHAT KIND OF ANECDOTAL AND
2 DESCRIPTIVE EVIDENCE WE HAD AT THE TIME, AND WE
3 KNEW THAT IN CONNECTION WITH CLASS CERTIFICATION,
4 YOU WERE GOING TO ASK THE VERY QUESTION YOU'RE
5 ASKING, WHICH IS, WHO'S THE CLASS? IS THERE ONE
6 CLASS? ARE THERE SMALLER CLASSES?

7 AND WE NEED THAT DATA TO HELP ANSWER THAT
8 QUESTION.

9 AND WHAT WE'RE GOING TO DO WITH THE DATA
10 IS COMPARE IT TO THE ANECDOTAL EVIDENCE THAT WE
11 HAVE, WHICH IS THE EVIDENCE FROM THE DEFENDANTS'
12 FILES OF THE AGREEMENTS ABOUT WHO SAID WHAT TO
13 WHOM, AND WE'RE GOING TO LOOK AT THAT WITH THE
14 DATA.

15 AND WHEN WE DO THAT, WE'RE GOING TO MAKE
16 A MOTION FOR CLASS CERTIFICATION THAT IS GOING TO
17 BE AS SPECIFIC AS WE CAN OF WHAT THE CLASS SHOULD
18 BE BASED ON WHAT WE THINK THE DATA SHOWS.

19 AND SO WHEN YOU ASK ME WHAT -- TO WHAT
20 EXTENT ARE THE DATA PROBLEMS RELATED TO THE SCOPE
21 OF THE CLASS, THEY ARE RELATED IN THIS WAY: WE ARE
22 LOOKING AT THE DATA TO, AMONG OTHER THINGS,
23 DETERMINE THE SCOPE OF THE CLASS, AND WE NEED THE
24 DATA TO DO THAT.

25 AND -- WE NEED THE DATA, AND IT'S NOT

1 JUST DATA FROM ONE OF THE COMPANIES. WE NEED DATA
2 FROM A NUMBER OF THE COMPANIES BECAUSE THAT HELPS
3 ANSWER THE QUESTION THAT YOU ASKED, WHICH IS A
4 BASIC QUESTION, WHICH WE AGREE WITH, WHAT IS THE
5 RIGHT SCOPE OF THE CLASS IN THIS CASE?

6 THE COURT: TO WHAT EXTENT ARE THE DELAYS
7 CAUSED BY YOUR LEAVING LIEFF CABRASER AND THERE
8 BEING INTERNAL FIGHTING WITHIN LIEFF CABRASER AS TO
9 WHETHER THIS CASE IS GOING TO YOUR FIRM OR STAYING
10 WITH LIEFF CABRASER?

11 MR. SAVERI: YOUR HONOR, I DON'T BELIEVE
12 THERE'S REALLY BEEN ANY SIGNIFICANT DELAY IN --

13 THE COURT: BUT THERE'S BEEN SOME CAUSED
14 BY THAT?

15 MR. SAVERI: YOUR HONOR, ON THE -- THE --
16 PERHAPS THE DAY I LEFT THERE WERE AN ISSUE ABOUT --
17 WE HAD TO SORT OUT RESPONSIBILITY AT THE
18 LIEFF CABRASER FIRM AFTER THE CHANGE IN FIRM.

19 BUT IN TERMS OF THE -- OF WHAT'S BEEN
20 GOING ON IN THE CASE, I THINK IT'S FAIR TO SAY THAT
21 IT'S BEEN RELATIVELY SEAMLESS. THERE'S BEEN NO
22 EVIDENCE OF ANY FIGHTING.

23 FOR TRANSITIONS IN THIS BUSINESS, I THINK
24 IT'S BEEN REMARKABLY SEAMLESS AND COLLEGIAL.

25 AND WE ARE FOCUSSED -- AND I THINK MY

1 COLLEAGUE, KELLY DERMODY, CAN ATTEST TO THIS --
2 WE'VE BEEN REALLY FOCUSSED ON PROTECTING THE
3 CLIENTS' INTEREST HERE AND NOT OUR OWN ECONOMIC
4 INTERESTS.

5 SO I THINK GIVEN THE WAY THESE THINGS CAN
6 GO, I THINK IT'S BEEN REMARKABLY SEAMLESS AND
7 COLLEGIAL.

8 AND WE HAVE A LOT OF WORK TO DO IN THE
9 CASE HERE, AND I THINK WE ARE BOTH FOCUSSED ON
10 THAT.

11 AND I -- I'M NOT GOING TO SAY TO YOU,
12 YOUR HONOR, THAT PROBLEMS WITH COMPLIANCE WITH YOUR
13 ORDER, FOR EXAMPLE, HAVE ANYTHING TO DO WITH THE
14 CHANGE IN CIRCUMSTANCE OF THE LEAD COUNSEL. THAT'S
15 OUR RESPONSIBILITY AND I -- AND I -- AND I'M
16 PREPARED TO ACCEPT RESPONSIBILITY FOR IT. SO I
17 WANT TO BE VERY CLEAR ABOUT THAT.

18 SO WE HAVE ISSUES THAT HAVE TO DO WITH
19 THE -- WITH WHETHER WE'RE GOING TO SATISFY AND BE
20 ABLE TO MEET THE SCHEDULE THAT HAVE TO DO LARGELY
21 WITH THE PRODUCTION OF DATA IN THE CASE.

22 I THINK THAT WHEN WE WERE HERE IN APRIL
23 IN FRONT OF YOUR HONOR, WE WERE JUST BEGINNING TO
24 GET AND UNDERSTAND --

25 THE COURT: LET ME ASK YOU SOMETHING.

1 LOOKING AT THIS DISCOVERY DISPUTE NUMBER 2, WHAT
2 ARE YOU SO AFRAID OF? DO THESE PLAINTIFFS HAVE
3 SOMETHING BAD IN THEIR EMPLOYMENT HISTORY? THAT'S
4 THE ONLY THING I CAN THINK OF WITH HOW HARD YOU ARE
5 FIGHTING TO GET ANY OF THEIR FORMER DISCIPLINARY
6 RECORDS OR ANYTHING ELSE.

7 I'M THINKING, JUST LIKE I THOUGHT WITH
8 THE D.O.J. WHEN THE DEFENDANTS FOUGHT TO PRODUCE
9 THAT D.O.J., THAT THERE MUST BE SOMETHING JUICY IN
10 THESE FIVE LEAD PLAINTIFFS, BECAUSE ONE OF THE
11 DECISIONS I HAVE TO MAKE TO DETERMINE WHETHER
12 THEY'RE LEAD PLAINTIFFS IS IF THEY HAVE ANY
13 INDIVIDUAL DEFENSES, AND THE ONLY WAY THAT I CAN
14 FIND THAT OUT IS BY KNOWING THEIR FULL EMPLOYMENT
15 HISTORY AND RECORD AND IF THERE WAS ANYTHING ABOUT
16 THESE PARTICULAR INDIVIDUALS THAT WOULD NOT MAKE
17 THEM SATISFACTORY REPRESENTATIVE PLAINTIFFS BECAUSE
18 THEY MAY HAVE THEIR OWN DISCIPLINARY PROBLEMS, THEY
19 MAY HAVE THEIR OWN H.R. PROBLEMS.

20 AND THE DEFENDANTS ARE ENTITLED TO GET
21 THAT INFORMATION FROM SOMEONE OTHER THAN YOUR
22 CLIENTS WHO HAVE PRODUCED ZERO FOR A YEAR THAT'S
23 BEEN FILED, A CASE THAT'S BEEN FILED 13 MONTH AGO.

24 MR. SAVERI: OKAY.

25 THE COURT: OKAY? SO I DON'T UNDERSTAND,

1 WHY ARE YOU FIGHTING THIS AFTER I ISSUED THE ORDER
2 ON APRIL 18TH THAT THE DEFENDANTS HAVE A RIGHT TO
3 LOOK AT THE LEAD PLAINTIFFS' EMPLOYMENT HISTORY,
4 EMPLOYMENT RECORDS?

5 THEY MAY NOT BE ELIGIBLE FOR ANY INCREASE
6 IN THEIR SALARY. THEY MAY NOT HAVE BEEN ONE OF THE
7 ONES THAT WOULD HAVE BEEN SOLICITED BY A COMPETITOR
8 BECAUSE THEY MAY HAVE HAD PERFORMANCE PROBLEMS.
9 THE DEFENDANTS ARE ENTITLED TO KNOW THAT.

10 SO WHY ARE YOU FIGHTING THIS? HOW DO YOU
11 WANT ME TO MAKE THE DETERMINATION ABOUT WHETHER
12 THESE POTENTIAL LEAD PLAINTIFFS HAVE INDIVIDUAL
13 DEFENSES THAT WAS MAKE THEM INAPPROPRIATE LEAD
14 PLAINTIFFS IF THEY CAN'T GET THIS INFORMATION?

15 THEY'VE GOTTEN NONE OF THIS INFORMATION
16 FROM YOU, BY THE WAY.

17 BUT ALSO, AN EMPLOYER WILL HAVE MORE
18 INFORMATION. AN EMPLOYEE WILL HAVE DIFFERENT
19 INFORMATION THAN AN EMPLOYEE HAS, AND I WOULDN'T BE
20 SURPRISED IF AN EMPLOYEE IS SELECTIVE ABOUT WHAT
21 INFORMATION THEY HAND OVER TO THEIR ATTORNEYS AND
22 WANT TO PRODUCE IN THIS CASE, FOR EXACTLY THE
23 REASONS THAT YOU'RE SAYING, PRIVACY, STIGMA OR
24 WHATEVER.

25 BUT AN EMPLOYER IS GOING TO HAVE A MORE

1 COMPLETE RECORD.

2 SO WHY ARE YOU FIGHTING THIS?

3 BECAUSE I'M ACTUALLY GRANTING DEFENDANTS'
4 MOTION. GO FORWARD WITH THOSE SUBPOENAS TO THIRD
5 PARTIES, ALL THE PRIOR EMPLOYERS OF THESE
6 EMPLOYEES, BECAUSE THAT'S WAY WE'RE GOING TO FIND
7 OUT IF THESE ARE APPROPRIATE LEAD PLAINTIFFS IN
8 THIS CASE.

9 SO TELL ME, WHY ARE YOU FIGHTING THIS?

10 MS. DERMODY: YOUR HONOR, IF I MIGHT,
11 KELLY DERMODY FOR THE PLAINTIFFS.

12 HAVING SPENT MY ENTIRE CAREER AS AN
13 EMPLOYMENT LAWYER, THIS COMES UP IN MY CASES, MY
14 CLASS ACTIONS ALL THE TIME, AND THE CHALLENGE HERE
15 REALLY IS NOT WHETHER THERE'S SOME SECRET SKELETON
16 IN THE CLOSET FOR THESE PLAINTIFFS.

17 IT'S ABOUT THEIR EMPLOYABILITY WITH THEIR
18 CURRENT EMPLOYER OR FUTURE PROSPECTIVE EMPLOYERS
19 AND IT'S AN INTIMIDATING, HARASSING TACTIC WHEN THE
20 ACTUAL INFORMATION THAT'S BEING SOUGHT HAS ALREADY
21 BEEN AGREED TO BE PRODUCED BY THE PLAINTIFFS.

22 ONE OF THE THINGS THE DEFENDANTS HAVE NOT
23 SAID TO US IS THAT THEY NEED TO GET THIS
24 INFORMATION FROM THIRD PARTIES BECAUSE THEY DON'T
25 HAVE WHAT THEY NEED YET.

1 IT'S ALL STILL UP IN THE AIR AS TO
2 WHETHER THEY'LL HAVE --

3 THE COURT: THAT'S BECAUSE YOU PRODUCED
4 NOTHING EVEN THOUGH I ORDERED THE PRODUCTION ON
5 APRIL 18TH. OKAY? SO YOU'RE KIND OF YOUR OWN --
6 YOU'VE WOUNDED YOURSELF, OKAY?

7 IF YOU HAD MADE A COMPLETE PRODUCTION
8 EARLIER, THEN THEY MAY NOT HAVE HAD TO SEEK THIS
9 INFORMATION FROM THIRD PARTIES.

10 BUT BECAUSE YOU PRODUCED ZILCH IN A CASE
11 THAT WAS FILED 13 MONTHS AGO, THAT'S WHY WE'RE IN
12 THIS PICKLE NOW.

13 MS. DERMODY: WELL, YOUR HONOR, THAT'S A
14 FAIR OBSERVATION, BUT IT'S NOT WHAT THEY PRESENTED
15 TO US, AND IF THEY'D LET US ACTUALLY PRODUCE THE
16 DOCUMENTS AND SAID TO US "WE'RE NOT COMFORTABLE
17 WITH WHAT YOU'VE PRODUCED, WE THINK THERE'S MORE
18 HERE," WE COULD HAVE HAD A COUPLE OF OPTIONS.

19 WE COULD HAVE HAD THE PLAINTIFFS HAVE A
20 CHANGE TO FIGURE OUT HOW TO GET FROM THEIR CURRENT
21 EMPLOYERS, VOLUNTARILY, INFORMATION TO GIVE TO THEM
22 IF IT WASN'T SUFFICIENT, OR WE COULD HAVE TRIED TO
23 WORK OUT SOME WAY THAT WAS LESS INTIMIDATING AND
24 HARASSING THAN PEOPLE THAT ARE VERY SCARED IN THIS
25 MARKET THAT WHEN THEIR EMPLOYERS GET A SUBPOENA,

1 THAT THAT PUTS A MARK ON THEM TO BE FIRED.

2 THE COURT: THESE PEOPLE HAVE ALREADY A
3 MARK. THEY'VE SUED, LIKE, SEVEN DIFFERENT OF THE
4 BIGGEST EMPLOYERS IN THE VALLEY.

5 IF YOU'RE SAYING THEY THOUGHT THEY WERE
6 GOING TO BE ANONYMOUS AND NOBODY WOULD EVER LEARN
7 ANYTHING ABOUT THEM -- THEY'VE ALREADY SAID "I WANT
8 TO BE LEAD PLAINTIFFS IN THIS SUIT."

9 MS. DERMODY: YEAH, BUT --

10 THE COURT: SO IT -- I DON'T KNOW. THIS,
11 "OH MY GOSH, I NOW NEED MY PRIVACY PROTECTED," IF
12 YOU PUT YOURSELF OUT THERE AS A LEAD PLAINTIFF,
13 UNFORTUNATELY, THEN YOU DO HAVE TO GO THROUGH QUITE
14 A BIT OF DISCOVERY INTO YOUR OWN PERSONAL
15 CIRCUMSTANCES.

16 MS. DERMODY: WHAT WE'VE HEARD FROM SOME
17 OF THE SUBPOENA RECIPIENTS IS THEY HAD NO IDEA
18 THESE PEOPLE WERE IN THE LAWSUIT.

19 THE COURT: THIS WAS ON THE CBS EVENING
20 NEWS, OKAY?

21 MS. DERMODY: I UNDERSTAND, YOUR HONOR.

22 THE COURT: PEOPLE IN CHINA IN TECH ARE
23 TALKING ABOUT THIS CASE.

24 I'M NOT PERSUADED. OKAY? IF YOU SIGN UP
25 TO BE A LEAD PLAINTIFF, UNFORTUNATELY, THERE IS

1 SOME DISCOVERY YOU'RE GOING TO HAVE TO BE SUBJECT
2 TO.

3 MS. DERMODY: AND WE'VE AGREED TO PRODUCE
4 EVERYTHING THEY'VE WANTED ABOUT THEIR FORMER
5 EMPLOYERS.

6 I THINK THE ONLY QUESTION, YOUR HONOR,
7 WAS WHETHER THE THIRD PARTY FORMER EMPLOYERS OR
8 CURRENT EMPLOYERS SHOULD BE SUBJECT TO THIS TYPE OF
9 DISCOVERY.

10 AND IF YOUR HONOR IS INCLINED TO ALLOW
11 THE SUBPOENAS TO GO FORWARD --

12 THE COURT: YES, I AM. I'M ALLOWING THEM
13 TO GO FORWARD. THIS MOTION IS GRANTED.

14 MS. DERMODY: I WOULD JUST ADD, YOUR
15 HONOR, IF THERE'S ANY MOVEMENT THERE AT ALL, IT'S
16 JUST IN THE CURRENT EMPLOYERS. IF THERE WAS AN
17 OPPORTUNITY FOR US TO AT LEAST LIMIT THE SUBPOENAS
18 TO FORMER EMPLOYERS AND TO HAVE THEM PRODUCE
19 INFORMATION ABOUT THEIR CURRENT EMPLOYMENT
20 THEMSELVES AND TO HOLD IN ABEYANCE THOSE SUBPOENAS
21 PENDING SOME OPPORTUNITY FOR US TO MEET AND CONFER
22 WITH THE DEFENDANTS AFTER THEY'VE SEEN DOCUMENTS TO
23 DETERMINE WHETHER THEY HAVE TO GO THROUGH THE
24 PROCESS OF SERVING CURRENT EMPLOYERS.

25 THAT'S THE ONE AREA THAT'S INCREDIBLY

1 SENSITIVE FOR THE CLIENTS, AND THE CASE LAW WOULD
2 SUGGEST --

3 THE COURT: BECAUSE YOU'RE SAYING THE
4 CURRENT EMPLOYERS DON'T KNOW ABOUT THIS LAWSUIT?

5 MS. DERMODY: IN MANY CASES, NO, THEY
6 DON'T KNOW ABOUT IT, AND BECAUSE OF THE POTENTIAL
7 IN A CURRENT EMPLOYMENT RELATIONSHIP, WHICH IS WHAT
8 THE CASE LAW TALKS ABOUT, OF THEM BEING MARKED AS A
9 LITIGANT OR A LITIGIOUS PERSON MEANS THAT THEIR
10 CURRENT EMPLOYER --

11 THE COURT: OKAY, BUT THAT'S SEPARATE.

12 ONCE YOU SAY "I WANT TO BE LEAD PLAINTIFF
13 IN THIS LAWSUIT AGAINST, WHATEVER, SEVEN OR EIGHT
14 COMPANIES IN THE VALLEY," PEOPLE ARE GOING TO KNOW
15 THAT YOU'RE A LEAD PLAINTIFF IN THIS CASE.

16 I GUESS I JUST -- I STILL DON'T SEE HOW
17 ALL THESE FOLKS ARE GOING TO BE SHROUDED IN
18 ANONYMITY WHEN THERE ARE ONLY FIVE LEAD PLAINTIFFS
19 IN THIS VERY HIGH PROFILE CASE.

20 MR. SAVERI: YOUR HONOR, WE'VE MADE OUR
21 BEST CASE AS TO WHY THIS MATERIAL SHOULD BE
22 PROTECTED AND WHY WE SHOULD TRY TO TAKE STEPS,
23 WHICH WE BELIEVE IN GOOD FAITH ARE LEGITIMATE BASED
24 ON THE CASE LAW, TO TRY TO PROCEED WITH THIS
25 DISCOVERY IN A NON-DUPLICATIVE, LESS INVASIVE WAY,

1 AND WE HAVE NOTHING ELSE TO ADD.

2 WE WILL COMPLY WITH YOUR ORDER AND WE
3 WILL --

4 THE COURT: WHEN?

5 MR. SAVERI: WE WILL DO IT IN A TIMELY --

6 THE COURT: WHEN? I NEED A DATE. FROM
7 NOW ON I UNDERSTAND THE WAY I HAVE TO DEAL WITH
8 YOU. I HAVE TO GIVE YOU DEADLINES FOR EVERYTHING.

9 WHEN ARE YOU GOING TO DO THAT?

10 MR. SAVERI: WITH RESPECT TO THE THIRD
11 PARTIES, WE DON'T -- THAT'S NOT IN OUR CONTROL.

12 THE COURT: WHEN ARE YOU GOING TO PRODUCE
13 THE INFORMATION THAT I ORDERED ON APRIL 18TH FROM
14 YOUR PUTATIVE LEAD PLAINTIFFS? WHEN IS THAT GOING
15 TO BE PRODUCED?

16 MS. DERMODY: WE CAN TELL YOUR HONOR, WE
17 CAN PRODUCE THE RESUMES TOMORROW.

18 IN TERMS OF THE OTHER DOCUMENTS, THERE
19 WERE ESI ISSUES, THERE WERE A NUMBER OF DATABASES
20 THAT OUR CLIENTS THEMSELVES ARE ON, SO WE HAD TO
21 ACTUALLY COLLECT ELECTRONIC DATA AND DO BOOLEAN
22 WORD SEARCHES AND THINGS LIKE THAT TO MAKE SURE.

23 WE WERE ACTUALLY GOING THROUGH A
24 RELATIVELY LARGE AMOUNT OF E-MAIL FROM CLIENTS AND
25 WE'RE WORKING THROUGH THAT. I MEAN, AS WE SPEAK,

1 WE'RE WORKING THROUGH THAT. THAT PROBABLY IS IN
2 THE NEXT WEEK.

3 THE COURT: WELL, THE SUBSTANTIAL
4 COMPLETION DATE IS JUNE 15TH, SO THAT'S YOUR DROP
5 DEAD DEADLINE.

6 MR. SAVERI: ABSOLUTELY, YOUR HONOR.

7 THE COURT: SO IF YOU'RE SAYING MAYBE IN
8 A WEEK, TOO BAD. IF IT DOESN'T COME IN BY
9 JUNE 15TH, I MAY DO SOME KIND OF PRECLUSIVE ORDER
10 AND SANCTION.

11 MS. DERMODY: ABSOLUTELY, YOUR HONOR.
12 BEFORE JUNE 15TH, IT'LL BE PRODUCED. IT'S A MATTER
13 OF WHETHER IT'LL BE THIS FRIDAY OR NEXT MONDAY
14 REALLY IS WHAT WE'RE TALKING ABOUT.

15 THE COURT: SO ARE YOU GOING TO WAIT
16 UNTIL THE LAST DATE? TELL ME WHEN YOU'RE GOING TO
17 PRODUCE YOUR E-MAIL.

18 MR. SAVERI: WE ARE GOING TO START
19 PRODUCING E-MAIL IN THE --

20 THE COURT: I WANT A DATE. YOU'VE LOST
21 MY TRUST. FROM NOW ON, EVERYTHING YOU DO, YOU'RE
22 GOING TO COMMIT TO ME A DATE. OKAY?

23 MR. SAVERI: I'M LOOKING AT --

24 THE COURT: AND IF YOU DON'T COMPLY WITH
25 THE DATE, I'M GOING TO ASK THE DEFENDANTS TO LET ME

1 KNOW AND I MAY SANCTION YOU, OKAY? BECAUSE I'M NOT
2 GOING TO LITIGATE THIS CASE WITH YOU ALL.

3 MR. SAVERI: YOUR HONOR, SO WE WILL -- WE
4 CAN START MAKING A ROLLING PRODUCTION OF SOME CHUNK
5 OF THE DATA EITHER BY -- ON FRIDAY, WHICH IS --

6 THE COURT: JUNE 8TH.

7 MR. SAVERI: -- THE 8TH, OR THE 11TH.

8 AND WE WILL -- AND WE WILL START ROLLING
9 IT. AND WE WILL -- WE WILL GIVE THEM CHUNKS OF
10 MATERIAL AS IT IS AVAILABLE.

11 AND I HOPE THAT WE WILL GET IT ALL DONE
12 BEFORE THE 15TH, BUT WE'LL START PRODUCING
13 THINGS -- THIS IS GOING TO -- JUST TO WE'RE CLEAR
14 ABOUT THIS --

15 THE COURT: ALL RIGHT. THIS IS WHAT I
16 WANT. ON JUNE THE 18TH --

17 MR. SAVERI: THE 18TH, OR THE --

18 THE COURT: THE 18TH, YOU'RE GOING TO
19 FILE -- JUNE 18TH, YOU'RE GOING TO FILE A
20 DECLARATION THAT YOU DID COMPLETE YOUR PRODUCTION
21 ON JUNE 15TH.

22 MR. SAVERI: OKAY. AND YOUR HONOR --

23 THE COURT: AND THAT YOU MET THE
24 JUNE 5TH DEADLINE FOR THE RESUMES, YOU MADE THE
25 JUNE 8TH DEADLINE FOR STARTING THE PRODUCTION.

1 MR. SAVERI: OKAY. ABSOLUTELY, YOUR
2 HONOR.

3 AND -- I TRUST, AND I HOPE, THAT WHEN
4 WE'RE DONE WITH THAT, YOU WILL KNOW THAT WE ARE NOT
5 TAKING THIS LIGHTLY AND WE ARE ACCEPTING -- YOU
6 KNOW, WE'RE TAKING THIS SERIOUSLY.

7 SO I CAN ONLY SAY --

8 THE COURT: I DON'T GET THAT SENSE.

9 MR. SAVERI: OKAY. AND I UNDERSTAND
10 THAT.

11 THE COURT: YOU'VE HAD VERY LITTLE TO
12 PRODUCE AND YOU HAVEN'T PRODUCED IT AND YOU'VE BEEN
13 BREATHING DOWN THE DEFENDANTS' BACKS TO GIVE YOU
14 MEGABYTES AND TERABYTES OF INFORMATION AND YOU
15 HAVEN'T EVEN RECIPROCATED WITH RESUMES. I MEAN,
16 HOW LONG COULD FIVE PEOPLE'S RESUMES TAKE TO
17 PRODUCE?

18 MR. SAVERI: OKAY.

19 MS. DERMODY: YOUR HONOR, IT MAY HAVE
20 BEEN A MISTAKEN IMPRESSION ABOUT THE IMPACT OF
21 TIMING ON THE RELATIVE PARTIES.

22 FOR US, THE IMPACT OF THE DATA TIMING HAS
23 AN ENORMOUS IMPACT IMMEDIATELY ON OUR ABILITY TO DO
24 OUR CLASS CERT BRIEFING, WHEREAS THE IMPACT OF
25 PRODUCING, AS YOU HAVE IDENTIFIED, A RELATIVELY

1 SMALL UNIVERSE OF PLAINTIFF DOCUMENTS DOESN'T
2 PREJUDICE DEFENDANTS.

3 AND IT DOESN'T EXCUSE NOT PRODUCING MORE
4 RAPIDLY THAN WE HAVE, BUT WE WEREN'T
5 ANTICIPATING --

6 THE COURT: YOU DON'T THINK THEY WANT TO
7 DO FOLLOW-UP DEPOSITIONS? IF THEY'VE GOT SOMETHING
8 JUICY ON ONE OF YOUR FIVE, YOU DON'T THINK THEY'RE
9 GOING TO TRY TO FOLLOW UP WITH A DEPOSITION OR
10 FOLLOW UP WITH FURTHER DISCOVERY?

11 MR. SAVERI: YOUR HONOR, WE'VE ALREADY
12 AGREED TO SCHEDULE THE DEPOSITION DATES. WE
13 OFFERED THE PLAINTIFFS FOR A DEPOSITIONS EVEN
14 BEFORE THERE WAS ANY FORMAL REQUEST.

15 THE COURT: NO. I'M SAYING THEY MAY HAVE
16 OTHER THIRD PARTY DISCOVERY THEY WANT TO DO BASED
17 ON WHAT YOU PRODUCE.

18 MR. SAVERI: OKAY.

19 THE COURT: IF THEY FIND OUT THAT ONE OF
20 YOUR FIVE GOT FIRED FROM A PREVIOUS EMPLOYER, YOU
21 DON'T THINK THEY WANT TO FOLLOW UP ON THAT?

22 MR. SAVERI: I AM SURE THAT THEY WOULD
23 WANT TO FOLLOW UP ON IT, YOUR HONOR.

24 THE COURT: UM-HUM.

25 MR. SAVERI: AT SOME POINT IN TIME -- I

1 MEAN, THERE'S NOTHING -- YOU ASKED A QUESTION ABOUT
2 SKELETONS IN THE CLOSET.

3 THE COURT: THEIR DATE FOR OPPOSITION
4 CURRENTLY IS AUGUST 2ND.

5 MR. SAVERI: YES.

6 THE COURT: AND SO YOU'RE SAYING, "WELL,
7 WE COULD JUST PRODUCE ON JUNE 15TH OR A LITTLE BIT
8 LATER AND IT WOULD BE FINE FOR THEM BECAUSE THEY
9 DON'T REALLY HAVE THAT MUCH TO DO AFTER THEY GET
10 OUR DISCOVERY AND IT'S SUCH A SMALL, DISCRETE
11 AMOUNT."

12 THAT'S THE ARGUMENT I JUST HEARD.

13 MS. DERMODY: YOUR HONOR, I PROBABLY
14 DIDN'T STATE THAT VERY WELL.

15 I THINK IT'S MORE WHEN WE ARE TALKING
16 ABOUT THE CONCERN WE HAD WITH THE SCHEDULE TODAY
17 AND WE COME INTO COURT TO SAY THERE'S BEEN A
18 CHALLENGE FOR US WITH THE DATA THAT IMPACTS OUR
19 CLASS CERTIFICATION READINESS.

20 WE WERE NOT TRYING TO SAY THAT DEFENDANTS
21 THEMSELVES HAVE BEEN TARDY AND NOT DILIGENT IN
22 GETTING THINGS TO US. IT'S JUST A MATTER OF THE
23 AMOUNT OF DATA AND THE WAY IT HAS ROLLED OUT HAS
24 PUT US IN A POSITION WHERE WE REALIZE THAT IN ORDER
25 FOR US TO IDENTIFY THE PROPER CLASS, DO THE PROPER

1 ANALYSIS AND TO MEET OUR LEGAL STANDARD, WE HAD TO
2 COME FORWARD AND ASK THE COURT FOR MORE TIME.

3 WE HAVE NOT HEARD FROM THE DEFENDANTS
4 THAT OUR SCHEDULE OF PRODUCING DOCUMENTS HAS PUT
5 THEM INTO A SIMILAR POSITION.

6 AND WE REGRET VERY MUCH THE IMPRESSION
7 WE'VE LEFT WITH THE COURT THAT WE DIDN'T TAKE IT
8 SERIOUSLY.

9 WE DID NOT INTEND TO DO ANYTHING TO
10 PREJUDICE DEFENDANTS AND WE THOUGHT BY GOING
11 THROUGH ALL OF THE DOCUMENTS AT ONCE AND GIVING
12 THEM TO THEM BEFORE THE DEADLINE, THAT FOR THEM,
13 THAT TIMING WOULD BE SUFFICIENT.

14 WE CAN SEE YOUR HONOR HAS QUESTIONS ABOUT
15 THAT. THESE WEREN'T QUESTIONS RAISED BY THE
16 PARTIES IN THE CASE, SO WE HAD NOT ADDRESSED THOSE
17 IN THAT CONTEXT.

18 THE COURT: WELL, I'M NOT PERSUADED
19 BECAUSE YOU TRIED TO SHUT THEM DOWN WITH THIRD
20 PARTIES AS WELL. YOU'RE SHUTTING THEM DOWN WITH
21 THIRD PARTIES AND THEN YOU'RE NOT PRODUCING WITH
22 THE PLAINTIFFS, SO I DON'T SEE HOW YOU INTENDED
23 THEM TO MOVE FORWARD WITH THEIR DISCOVERY ON
24 WHETHER THESE PLAINTIFFS CAN ACTUALLY BE
25 REPRESENTATIVE AND APPROPRIATE LEAD PLAINTIFFS.

1 SO AS FAR AS DISCOVERY DISPUTE JOINT
2 REPORT NUMBER 2, THE THIRD PARTY SUBPOENAS ARE
3 ALLOWED TO GO FORWARD AND YOU DON'T NEED TO RAISE
4 THAT ISSUE WITH JUDGE LLOYD.

5 I THINK THAT INFORMATION IS HIGHLY
6 PROBATIVE AND IS RELEVANT AND THE CONCERNS RAISED
7 BY THE PLAINTIFFS ARE MINIMIZED BY VIRTUE OF THE
8 FACT THAT THESE ARE ALREADY FIVE INDIVIDUALS WHO
9 HAVE AGREED TO BE LEAD PLAINTIFFS IN THIS CASE.

10 SO THIRD PARTY SUBPOENAS WILL PROCEED.

11 NOW, OF ALL THE VARIOUS THINGS THAT THE
12 PLAINTIFFS ALLEGE HAVE NOT PRODUCED BY THE
13 DEFENDANTS, LET ME HEAR -- THE DEFENDANTS ARE GOING
14 TO COME UP AND SAY "WE THOUGHT WE HAD UNTIL
15 JUNE 15TH, THAT IS THE SUBSTANTIAL COMPLETION DATE,
16 WE'VE BEEN MAKING ROLLING PRODUCTIONS."

17 WHY IS THAT NOT GOOD ENOUGH? IT'S GOOD
18 ENOUGH FOR YOU, BUT IT'S NOT GOOD ENOUGH FOR THEM?

19 MR. SAVERI: WELL, YOUR HONOR, BECAUSE --

20 THE COURT: YEAH.

21 MR. SAVERI: I'M SORRY. I DIDN'T MEAN TO
22 INTERRUPT YOU.

23 THE REASON THAT -- WE KNOW NOW WHAT WE'RE
24 UP AGAINST WITH -- UP AGAINST WITH RESPECT TO THE
25 DATA PRODUCTION.

1 AND WE ARE NOT SAYING THAT THE DEFENDANTS
2 HAVE BEEN DILATORY.

3 WHAT WE ARE SAYING IS THAT IT'S A LOT OF
4 HARD WORK AND WE KNOW, GIVEN WHAT WE NEED TO DO AND
5 TO ANSWER THE QUESTIONS THAT WE BELIEVE ARE
6 LEGITIMATE QUESTIONS, ONE OF WHICH YOU'VE ALREADY
7 ASKED, WHICH IS, WHAT IS THE CLASS, THAT WE NEED
8 TIME TO UNDERSTAND THE DATA AND TO ANALYZE IT AND
9 TO MAKE OUR MOTION.

10 AND WE COME TO YOUR HONOR NOW AS --
11 WITHOUT HAVING HAD THE PRODUCTION OF THE DATA
12 COMPLETE, BUT KNOWING THAT WE DO NEED SOME RELIEF
13 FROM THE SCHEDULE.

14 AND WE -- WE THOUGHT THAT IT WOULD BE
15 MORE PRUDENT TO COME TO YOU, YOUR HONOR, AND RAISE
16 THE ISSUE NOW BEFORE THE DEADLINE HAD EXPIRED
17 BECAUSE THIS -- AND THAT WOULD BE THE BEST WAY TO
18 PROCEED AND WE COULD TRY TO PUT THIS OUT IN THE
19 OPEN, TO DESCRIBE TO YOU AS CLEARLY AS POSSIBLE
20 WHAT LOGISTICAL PROBLEMS WE ARE DEALING WITH AND
21 TRY TO GET SOME GUIDANCE FROM THE COURT ON IT.

22 WE'RE JUST TRYING TO ANTICIPATE THE
23 PROBLEM, ANY POTENTIAL PROBLEMS AND HEAD THEM OFF
24 RATHER THAN TO HAVE TO ADDRESS THEM AFTER THE FACT,
25 AND THAT'S WHY WE NEED THE SCHEDULE EXTENDED.

1 MS. DERMODY: AND YOUR HONOR, IF I MIGHT
2 JUST ADD, AT THE APRIL 18TH CMC, THE LAST TIME YOU
3 MET WITH THE PARTIES, THE DATA HAD -- WAS JUST
4 STARTING TO BE PRODUCED, HAD NOT EVEN BEEN
5 UPLOADED, THE EXPERTS HADN'T LOOKED AT IT. WE HAD
6 NO IDEA WHAT THE UNIVERSE WAS OF DATA.

7 SO AS WE STARTED TO LOOK AT THE DATA
8 ITSELF AND UNDERSTAND ALL OF THE QUESTIONS THAT
9 CAME UP, ALL OF THE DATA THAT WAS MISSING -- WHICH
10 IS AN ONGOING PROCESS. I MEAN, DATA IS STILL BEING
11 PRODUCED RIGHT NOW -- AND REALIZING THAT UNTIL WE
12 HAVE RELIABLE DATA FROM ALL OF THE DEFENDANTS THAT
13 CAN BE ANALYZED TOGETHER, WE AREN'T IN A POSITION
14 TO ACTUALLY PRESENT TO YOUR HONOR AN APPROPRIATE
15 ANALYSIS.

16 AND WE DIDN'T HAVE THAT ABILITY TO TELL
17 THE COURT THAT, OR REALLY TO ANTICIPATE THAT, ON
18 APRIL 18TH BECAUSE, AGAIN, WE DIDN'T KNOW WHAT THE
19 DATABASES LOOKED LIKE. WE DIDN'T KNOW THE VOLUME
20 OF DATA. IT HAS BEEN A MASSIVE UNDERTAKING.

21 AND NOW THAT WE'RE REALLY QUITE AWARE AND
22 ALERT TO THE CHALLENGES OF THAT DATA, WE ARE
23 FINALLY IN A POSITION TO COME TO THE COURT WITH A
24 MUCH BETTER UNDERSTANDING OF HOW FAR WE HAVE TO GO
25 TO GET TO THAT PLACE TO GIVE THE COURT A COHERENT

1 ANALYSIS.

2 THE COURT: THE THINGS THAT YOU STATE
3 THAT YOU NEED TIME FOR CAN CERTAINLY BE OVERLAPPING
4 VERSUS JUST CONSECUTIVELY DONE.

5 MR. SAVERI: ABSOLUTELY, YOUR HONOR.

6 AND IF YOU LOOK AT THE TASKS THAT WE
7 DESCRIBE, WE'RE NOT ASKING FOR YOU TO ADD ALL THE
8 WEEKS TOGETHER AND GIVE US SOMETHING THAT ADDS UP
9 TO 28 WEEKS.

10 WE BELIEVE THAT A NUMBER OF THESE TASKS
11 ARE OVERLAPPING.

12 BUT AGAIN, YOUR HONOR, WE WANTED TO BE AS
13 CLEAR AS POSSIBLE ABOUT WHAT WE'RE ACTUALLY DOING.

14 THE COURT: ALL RIGHT. LET ME HEAR FROM
15 THE DEFENDANTS.

16 I AM INCLINED TO GIVE A LITTLE BIT OF
17 TIME TO THE PLAINTIFFS, BUT NOWHERE NEAR WHAT
18 THEY'VE REQUESTED. LET ME HEAR WHAT YOUR VIEW IS
19 ON HOW MUCH ADDITIONAL TIME THE PLAINTIFFS SHOULD
20 BE GIVEN.

21 MR. TUBACH: GOOD AFTERNOON, YOUR HONOR.
22 MICHAEL TUBACH.

23 WE DON'T THINK THE PLAINTIFFS, FRANKLY,
24 SHOULD GET ANY MORE TIME. AS THE COURT NOTED, THE
25 COURT SET THE SCHEDULE SEVERAL MONTHS AGO, AND

1 THEIR PRIMARILY ARGUMENT NOW SEEMS TO BE THEY HAD
2 NO IDEA HOW MUCH DATA THEY WOULD BE GETTING, WHICH
3 IS -- IT DOESN'T REALLY FLY.

4 WE ARE ALMOST ALL PUBLIC COMPANIES. A
5 NUMBER OF OUR EMPLOYEES ARE PUBLIC.

6 WE'VE BEEN NEGOTIATING WITH THE
7 PLAINTIFFS FOR WEEKS. WE NEGOTIATED EXACTLY HOW
8 MUCH DATA THEY WERE INSISTING ON GETTING. THEY
9 DIDN'T WANT JUST THE FIVE YEAR PERIOD OF THE CLASS
10 AS THEY DEFINED IT. THEY WANTED FOUR YEARS BEFORE
11 THEN AND TWO YEARS AFTER.

12 AND WE SPENT WEEKS NEGOTIATING HOW MANY
13 FIELDS OF DATA THEY WANTED, AND THEY'VE GOTTEN
14 EXACTLY WHAT THEY ASKED FOR.

15 SO TO COME IN NOW, FRANKLY, AND SAY THAT
16 THE AMOUNT OF DATA IS A SURPRISE IS JUST NOT
17 CREDIBLE. THEY HAVE KNOWN EXACTLY HOW MUCH DATA
18 THEY WOULD BE GETTING AND THIS IS WHAT THEY'VE
19 GOTTEN.

20 THEY KNEW ON APRIL 18 WHAT THEY HAD
21 GOTTEN. THEY HAD GOTTEN -- THEY'VE HAD SOME OF OUR
22 EMPLOYMENT DATA FOR TWO MONTHS NOW. THEY GOT IT
23 BEFORE THE APRIL 18 CMC.

24 AND THEY'VE HAD WELL OVER 90 PERCENT,
25 PROBABLY IN THE HIGH 90 PERCENT OF COMPENSATION

1 DATA SINCE MAY 9TH, SINCE THE COURT ORDERED US,
2 PARTICULARLY APPLE, TO PRODUCE ALL OF OUR
3 COMPENSATION RECRUITING DATA BY MAY 9TH, AND WE MET
4 THAT DEADLINE.

5 AND THE DEFENDANTS PRODUCED VIRTUALLY ALL
6 OF THAT COMPENSATION DATA, WITH THE EXCEPTION OF
7 SOME. AS THE PLAINTIFFS NOTED, THERE WERE SOME
8 ERRORS AND OMISSIONS THAT HAPPENED AND WE'VE GONE
9 BACK AND FIXED THOSE.

10 AND SO THEY'VE HAD LOTS OF TIME TO LOOK
11 AT WHAT DATA THEY KNEW THEY WOULD BE GETTING.

12 THE PROBLEM WITH MOVING THE SCHEDULE,
13 YOUR HONOR, IS THAT THE COURT ALREADY, IN OCTOBER,
14 SET A VERY TIGHT DEADLINE TO MOVE THIS CASE TO
15 TRIAL IN JUNE OF 2013.

16 I WENT BACK AND LOOKED AT THE SCHEDULE
17 AND IT IS A VERY TIGHT SCHEDULE, AND THE COURT
18 WANTED THAT BECAUSE IT SAID IT WANTED TO MOVE THE
19 CASE FORWARD AND IT WANTED TO MAKE SURE THAT WE
20 MOVE FROM ONE STEP TO THE OTHER AS EXPEDITIOUSLY AS
21 POSSIBLE.

22 SO WHAT WE HAVE AS A RESULT IS A HEARING
23 ON CLASS CERTIFICATION ON SEPTEMBER 20TH, AND THEN
24 EXPERT REPORTS DUE, INITIAL EXPERT REPORTS DUE IN
25 DECEMBER, FACT DISCOVERY CUT OFF IS BEFORE THEN,

1 THEY HAVE THEIR EXPERT REPORTS DUE DECEMBER 14TH,
2 AND OUR REBUTTAL REPORTS ARE GOING TO BE DUE
3 JANUARY 4TH.

4 IF WE MOVE CLASS CERT EVEN, EVEN ONE
5 MONTH, THAT SCHEDULE BECOMES ENTIRELY UNWORKABLE
6 BECAUSE THAT MEANS THE COURT WILL BE HAVING A
7 HEARING ON CLASS CERT ON OCTOBER 20TH, AND THE
8 COURT'S GOING TO NEED SOME TIME TO RULE, AND THAT
9 MEANS WE'RE THEN SOMEWHERE IN NOVEMBER, AND TO BE
10 ABLE -- AND WHERE WE DON'T EVEN KNOW, IS THERE A
11 CLASS? HOW BIG IS THE CLASS? WHAT DOES IT CONSIST
12 OF?

13 WE CAN'T POSSIBLY PREPARE OUR EXPERT
14 REPORTS TO BE READY -- THESE ARE EXPERT REPORTS FOR
15 TRIAL -- TO BE READY TO GO TO TRIAL AND SAY THIS IS
16 WHY THE CLASS, IF YOU EVEN CERTIFY ONE, SHOULDN'T
17 GO FORWARD, IT DOESN'T MAKE SENSE, WHY THERE'S NO
18 LIABILITY AND WHY THERE CAN'T POSSIBLY BE DAMAGES.

19 WE CAN'T REALLY UNDERTAKE THAT WORK, AND
20 FRANKLY, SHOULDN'T HAVE TO SPEND THE MONEY TO SORT
21 OF GUESS AT WHERE THE COURT MIGHT BE GOING IN TERMS
22 OF WHAT THE CLASS WILL BE, IF ANY.

23 OF COURSE, WE'RE HOPEFUL AND CONFIDENT WE
24 CAN CONVINCE THE COURT THERE SHOULDN'T BE A CLASS
25 CERTIFIED AT ALL BECAUSE YOU CAN'T PROVE COMMON

1 IMPACT. YOU CAN'T PROVE IMPACT WITH COMMON
2 EVIDENCE.

3 BUT CERTAINLY ON A SCHEDULE THAT GIVES
4 THEM EVEN A MONTH, IT MAKES THE WHOLE REST OF THE
5 SCHEDULE ENTIRELY UNWORKABLE.

6 THE COURT: ALL RIGHT. DO YOU WANT TO
7 RESPOND TO THAT? BECAUSE I'M NOT MOVING THE TRIAL
8 DATE, SO SOMETHING HAS GOT TO GIVE.

9 MR. SAVERI: YOUR HONOR, A COUPLE POINTS.

10 FIRST, ON THE DATA, IT'S NOT JUST
11 STRICTLY THE SIZE OF THE DATA, BUT EVEN -- I THINK
12 MR. TUBACH ALERTED TO THE FACT THAT THERE ARE A
13 NUMBER OF QUESTIONS THAT WE HAVE TO ADDRESS WITH
14 RESPECT TO THE QUALITY OF THE DATA, WHAT HE CALLED
15 ERRORS AND OMISSIONS, THAT WE NEED TO FIGURE OUT IN
16 ORDER TO DO THE ANALYSIS.

17 SO WHILE WE MAY HAVE KNOWN WHAT WE'VE
18 ASKED FOR IN TOTO, ACTUALLY ROLLING UP OUR SLEEVES
19 AND WORKING WITH THE DATA IS SOMETHING DIFFERENT,
20 AND THAT'S WHAT WE'VE DONE AND WE'VE BEEN DILIGENT
21 IN THAT, IN TRYING TO ASK QUESTIONS AND TO SORT
22 THAT OUT.

23 AND I HAVE -- AND I'M NOT SAYING THAT THE
24 DEFENDANTS HAVE NOT RESPONDED. I THINK WE'VE
25 WRITTEN QUESTIONS AND THEY'VE ANSWERED THEM.

1 WITH RESPECT TO THE SCHEDULE, YOUR HONOR,
2 I THINK WE HAVE TWO CHOICES WHICH WE PROPOSED TO
3 YOUR HONOR. ONE WOULD BE TO KEEP THE TRIAL DATE
4 AND SHIFT THE CLASS CERTIFICATION SCHEDULE WITHIN
5 THE ESTABLISHED SCHEDULE AND TO KEEP THE TRIAL
6 DATE.

7 THE OTHER OPTION WOULD BE TO ESSENTIALLY
8 SLIDE THE KEY DATES AND KEEP THE SEQUENCE OF EVENTS
9 AS WAS SET ORIGINALLY BY THE COURT.

10 THOSE ARE THE TWO OPTIONS.

11 THE COURT: SO JUST KEEP YOUR DEADLINE
12 JUNE 28TH?

13 MR. SAVERI: I'M SORRY, YOUR HONOR?

14 THE COURT: JUST KEEP THE HEARING ON
15 SEPTEMBER 20TH? JUST KEEP THE DATES AS SET?

16 MR. SAVERI: NO, YOUR HONOR. WHAT WE ARE
17 SAYING IS WE WOULD LIKE THE CLASS CERTIFICATION
18 SCHEDULE, ALL THOSE DATES TO SLIP SOME PERIOD OF
19 TIME TO GIVE US AN OPPORTUNITY TO DO THE WORK.

20 THERE ARE TWO OPTIONS. ONE IS TO KEEP
21 THAT SCHEDULE, TO KEEP THE REST OF THE KEY DATES IN
22 THE SCHEDULE, THAT IS, THE SUMMARY JUDGMENT MOTION,
23 THE TRIAL DATE.

24 ANOTHER WOULD BE TO ESSENTIALLY SHIFT THE
25 SCHEDULE BY WHATEVER TIME YOU THINK IS APPROPRIATE

1 TO GIVE THE PLAINTIFFS THE OPPORTUNITY THEY NEED TO
2 ADDRESS AND TO UNDERSTAND THE DATA THAT HAS LARGELY
3 BEEN PRODUCED, BUT NOT COMPLETELY PRODUCED.

4 THE COURT: YOU KNOW, YOU REALLY HAVE
5 SHOT YOURSELF IN THE FOOT. I WOULD HAVE BEEN MUCH
6 MORE AMENABLE TO THIS HAD YOU NOT COME IN WITH
7 UNCLEAR HANDS. I'M JUST NOT THAT OPEN TO IT.

8 MR. SAVERI: YOUR HONOR, I APOLOGIZE --

9 THE COURT: IF YOU HAVEN'T DONE YOUR
10 PART, THEN I'M NOT GOING TO PENALIZE THESE FOLKS
11 FOR PRODUCING TERABYTES AND TERABYTES OF DATA AND
12 YOU HAVEN'T EVEN PRODUCED A C.V. THAT WAS ORDERED
13 ON APRIL 18TH.

14 MR. SAVERI: YOUR HONOR, ALL I -- I WOULD
15 SAY TWO THINGS. AGAIN, I APOLOGIZE FOR NOT HAVING
16 DONE THIS IN A MORE PROMPT WAY.

17 BUT I THINK THAT WE CAN -- I MEAN, IN
18 THESE CASES, WHICH ARE COMPLEX CASES, THE SCHEDULES
19 FREQUENTLY SHIFT -- AND WE DON'T WANT TO DO THIS IN
20 A WAY THAT PREJUDICES ANYBODY.

21 WHAT WE'RE TRYING TO DO IS APPROACH THIS
22 IN A WAY THAT GIVES EVERYBODY AN OPPORTUNITY TO BE
23 HEARD AND TO HAVE THE INFORMATION THEY NEED TO
24 RESOLVE THIS CASE ON THE MERITS.

25 AND ALL I CAN SAY IS I REGRET THE FACT

1 THAT THE MATERIAL HASN'T BEEN PRODUCED MORE
2 QUICKLY, AND ALL I CAN DO IS COMMIT TO YOU THAT I
3 WILL MAKE SURE THAT IT DOES IN THE FUTURE.

4 AND I UNDERSTAND THAT YOU'VE SAID THAT IF
5 I DON'T, I'LL PAY THE PRICE FOR IT, AND I'M READY
6 TO DEAL WITH THAT.

7 BUT AT THE END OF THE DAY, YOUR HONOR, I
8 THINK IT'S MORE IMPORTANT FOR US TO KEEP OUR EYE ON
9 THE ULTIMATE ISSUE HERE, WHICH IS THE PARTIES
10 SHOULD HAVE AN OPPORTUNITY TO RESOLVE THIS ON THE
11 MERITS AND EVERYBODY SHOULD HAVE AN OPPORTUNITY TO
12 HAVE THE INFORMATION THEY NEED TO DO THAT.

13 THAT'S ALL I CAN SAY.

14 THE COURT: WELL, I FIND WHAT MR. TUBACH
15 SAID PERSUASIVE. IF THE CLASS CERT HEARING, IN ITS
16 BROADEST CASE SCHEDULE, ONLY GAVE BASICALLY TWO
17 MONTHS AND TEN DAYS FOR A FACT DISCOVERY CUT OFF --
18 SO SEPTEMBER 20TH WAS THE HEARING, FACT DISCOVERY
19 CUT OFF WAS NOVEMBER 30TH.

20 THE MORE YOU PUSH THE CLASS CERT HEARING
21 BACK, THEN YOU'RE JUST LIMITING THE TIME FOR FACT
22 DISCOVERY.

23 AND MY GUESS IS THIS IS GOING TO BE A
24 VERY COMPLEX CLASS CERT MOTION, SO I WOULD NEED AT
25 LEAST, AT LEAST PROBABLY A MONTH TO GET THE ORDER

1 OUT.

2 SO THEN IT'S JUST FURTHER CONDENSING AND
3 REDUCING THE TIME BEFORE FACT DISCOVERY CUT OFF.

4 MR. SAVERI: YOUR HONOR --

5 THE COURT: I'M NOT PERSUADED BY THAT.

6 MR. SAVERI: YOUR HONOR, IF I MAY?

7 THE COURT: YEAH.

8 MR. SAVERI: THERE ARE PLENTY OF CASES
9 WHERE THE CLASS CERTIFICATION IS DONE AT THE END OF
10 THE DISCOVERY CUT OFF, SO THERE IS -- THERE'S NO
11 NECESSARY LINKAGE BETWEEN THE CLASS CERTIFICATION
12 SCHEDULE ITSELF AND MERITS DISCOVERY.

13 I MEAN, WE HAVE -- I THINK WE'VE
14 CONTEMPLATED ALL THE WAY ALONG IN THIS CASE, YOUR
15 HONOR, THAT THERE WOULD BE MERITS DISCOVERY THAT
16 WOULD BE GOING ON WHILE CLASS CERTIFICATION WAS
17 BEING BRIEFED, AND INDEED, WHILE IT WAS UNDER
18 SUBMISSION WITH THE COURT.

19 SO I DON'T THINK THERE'S ANY NECESSARY
20 REASON WHY THE -- WHY MOVING THE CLASS
21 CERTIFICATION SCHEDULE REALLY WOULD AFFECT THE
22 ABILITY TO --

23 THE COURT: I'M NOT GOING TO DO IT THAT
24 WAY. I'M NOT GOING TO DO CLASS CERT AT THE END OF
25 THE CASE.

1 MR. SAVERI: YOUR HONOR, I WOULD AGREE
2 THAT'S THE MORE TRADITIONAL WAY TO DO IT. I'M JUST
3 SUGGESTING THAT RECENTLY, THERE ARE OTHER -- COURTS
4 HAVE APPROACHED IT DIFFERENTLY.

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: ALL RIGHT. THIS IS ONE
7 PROPOSAL: WE KEEP THE SEPTEMBER 20TH HEARING DATE;
8 I'LL GIVE A THREE WEEK EXTENSION TO JULY 19TH; THE
9 DEFENDANTS WOULD HAVE FOUR WEEKS, OR A MONTH, FOR
10 OPPOSITION, AUGUST 16TH; THE PLAINTIFFS WOULD HAVE
11 TWO WEEKS FOR A REPLY, AUGUST 30TH, WHICH IS WHEN
12 THE REPLY BRIEF WAS DUE UNDER THE ORIGINAL SCHEDULE
13 FROM OCTOBER; AND THE HEARING STAYS ON FOR
14 SEPTEMBER 20TH.

15 LET ME HEAR FROM BOTH SIDES AS TO -- NOW,
16 I UNDERSTAND FROM THE DEFENDANTS YOU'RE LOSING ONE
17 WEEK BECAUSE YOU OTHERWISE WOULD HAVE GOTTEN FIVE
18 WEEKS IN THE PREVIOUS SCHEDULE, SO YOU'RE GETTING
19 ONE LESS WEEK; AND THEN THE PLAINTIFFS WOULD HAVE
20 GOTTEN BASICALLY ONE, TWO, THREE, FOUR WEEKS FOR
21 THEIR REPLY, SO THEY'RE GETTING THAT CUT IN HALF.

22 SO LET ME HEAR FROM YOU.

23 MR. TUBACH: JUDGE, I -- I APPRECIATE THE
24 COURT WANTING TO KEEP THE SCHEDULE AS MUCH AS
25 POSSIBLE.

1 DOING AN OPPOSITION TO CLASS
2 CERTIFICATION IN FOUR WEEKS WITH SEVEN DEFENDANTS
3 IS WELL TO NIGH IMPOSSIBLE, PARTICULARLY OVER THE
4 HOLIDAYS.

5 IT IS A VERY DIFFICULT MOTION TO PUT
6 TOGETHER, BECAUSE WE DON'T HAVE THE FIRST CLUE
7 ABOUT WHAT THAT MOTION IS GOING TO SAY. WE WILL
8 GET THAT WHENEVER THE PLAINTIFFS FILE THEIR MOTION.

9 THE COURT, OF COURSE, URGED THE
10 PLAINTIFFS TO NARROW THEIR CLASS EARLIER, AND
11 THEY'VE SAID, "NO, WE WANT TO WAIT UNTIL WE FILE
12 OUR CLASS CERT MOTION."

13 IF THE COURT IS INCLINED TO STICK TO
14 SOMETHING LIKE THE SCHEDULE THAT IT HAS, WHAT I
15 URGE THE COURT TO DO IS NOT TAKE A WEEK AWAY FROM
16 US, BUT MOVE THE CLASS CERT HEARING BY ONE WEEK SO
17 WE CAN KEEP OUR FIVE WEEKS.

18 IT IS GOING TO BE COORDINATING AMONG
19 SEVEN DEFENDANTS, ALL OF WHOM HAVE A VERY STRONG
20 INTEREST IN THIS CLASS CERTIFICATION, AND DOING SO
21 IN LESS THAN FIVE WEEKS IS GOING TO BE VERY
22 DIFFICULT.

23 THE COURT: ARE YOU DOING A JOINT
24 OPPOSITION, OR HOW MUCH COOPERATION DO YOU EXPECT?

25 MR. TUBACH: WE'RE DOING A JOINT

1 OPPOSITION. THAT'S PART OF WHAT TAKES SO LONG.
2 EVEN IF WE ALL AGREE, IT TAKES A WHILE FOR US ALL
3 TO SAY SO.

4 AND WE MAY NOT AGREE ON EVERYTHING.
5 EVERY DEFENDANT HERE IS VERY WELL REPRESENTED BY
6 WELL EXPERIENCED COUNSEL AND THEY HAVE STRONG
7 OPINIONS ABOUT WHAT SHOULD HAPPEN.

8 AND TO DO THAT IN FOUR WEEKS, TO COME TO
9 YOU WITH WHAT WE EXPECT IS GOING TO BE ONE
10 OPPOSITION, SPEAKING WITH ONE VOICE, TAKES TIME.

11 (DISCUSSION OFF THE RECORD BETWEEN THE
12 COURT AND THE CLERK.)

13 MR. TUBACH: YOUR HONOR, IF THE
14 COURT'S --

15 THE COURT: THAT'S NOT IDEAL, BUT WE
16 COULD --

17 WHAT WERE YOU GOING TO SAY?

18 MR. TUBACH: SORRY, YOUR HONOR. I DON'T
19 MEAN TO INTERRUPT.

20 THE COURT: WHAT WERE YOU GOING TO SAY?

21 MR. TUBACH: IF THE COURT'S SCHEDULE
22 PERMITS, WE HOPE THE COURT COULD SET ASIDE SOME
23 TIME FOR A SUBSTANTIAL HEARING ON THE CLASS CERT
24 MOTION. WE DO THINK THAT'S A VERY SIGNIFICANT
25 MOTION WE WANT TO HAVE HEARD.

1 IF THAT NEEDS TO MOVE BY A DAY ONE WAY OR
2 THE OTHER, IF THAT HELPS THE COURT AT ALL IN
3 SCHEDULING -- WE DO THINK IT WOULD BE HELPFUL, FOR
4 INSTANCE, FOR THE COURT TO HEAR LIVE TESTIMONY FROM
5 THE EXPERTS. IT'S INCREDIBLY HELPFUL IN SORTING
6 THROUGH ALL OF THESE DIFFICULT ISSUES.

7 THE COURT: I DON'T KNOW IF THAT WOULD BE
8 NECESSARY. IT CAN'T BE SUFFICIENTLY REPRESENTED IN
9 THEIR DECLARATIONS?

10 MR. TUBACH: IT CAN. IT'S JUST --
11 IT'S -- I'VE JUST -- IN MY EXPERIENCE, IT'S VERY
12 HELPFUL TO HAVE THE ECONOMISTS COME IN AND TELL YOU
13 THEMSELVES WHY SOMETHING MAKES SENSE OR DOESN'T
14 MAKE SENSE AND YOU THEN JUDGE -- YOU CAN JUDGE
15 IT -- IT'S MUCH EASIER TO DO FOR THE COURT.

16 EVEN HAVING EXPERT REPORTS, HAVING AN
17 EXPERT UP THERE EXPLAINING LIVE WHY SOMETHING DOES
18 OR DOESN'T MAKE SENSE GIVES THE COURT A REALLY GOOD
19 OPPORTUNITY TO EVALUATE THE CREDIBILITY, WHICH IS,
20 AT THE END OF THE DAY, WHAT THE COURT HAS TO DO.

21 MR. SAVERI: YOUR HONOR, I HAVE A VIEW ON
22 THAT IF YOU'RE INTERESTED IN HEARING ABOUT THAT.

23 THE COURT: I AM. BUT LET ME JUST
24 CHECK --

25 CAN YOU CHECK OCTOBER 4TH, PLEASE?

1 THE CLERK: IT'S THE LAST DAY FOR
2 DISPOSITIVE MOTIONS IN LOWE VERSUS LINKEDIN, BUT
3 THAT'S THE ONLY THING.

4 THE COURT: OKAY.

5 THE CLERK: AND I THINK WE'LL BE IN THE
6 MIDDLE OF TRIAL IN ABAXIS AS WELL.

7 THE COURT: OCTOBER 4TH?

8 THE CLERK: YES. I THINK IT STARTS --

9 THE COURT: I'M SORRY?

10 THE CLERK: I BELIEVE IT STARTS ON THE
11 24TH, SET TO START ON THE 24TH.

12 THE COURT: ABAXIS?

13 THE CLERK: YEAH, AND WE'LL STILL BE
14 GOING.

15 THE COURT: YEAH, THAT WOULD DEFINITELY
16 BE MORE THAN TWO WEEKS.

17 HM. SEE, THAT'S WHY IT STARTS BECOMING
18 PROBLEMATIC TO CHANGE THESE, BECAUSE WE HAVE SUCH A
19 HIGH VOLUME THAT EVERYTHING IS KIND OF LINED UP TO
20 FIT WITH MY CHAMBERS STAFF AND EVERYTHING, AND TO
21 MOVE IT IS STARTING TO CAUSE PROBLEMS BECAUSE THEN
22 IT'S RUNNING INTO OTHER THINGS THAT WE'VE ALSO SET.

23 MR. TUBACH: YOUR HONOR --

24 THE COURT: WHAT WERE YOU GOING TO SAY
25 ABOUT THE EXPERT TESTIMONY DURING CLASS CERT?

1 MR. SAVERI: YOUR HONOR, MY -- MY
2 EXPERIENCE HAS BEEN THAT THE COURTS DO NOT NEED TO
3 TAKE UP THE TIME WITH THEIR SCHEDULE TO TURN IT
4 INTO AN ALL DAY EVIDENTIARY HEARING WITH -- GIVEN
5 THE SCOPE OF THE COURT'S WORK LOAD.

6 AND THIS IS AKIN TO A BENCH TRIAL AND A
7 LOT OF BENCH TRIALS ARE SUBMITTED JUST BASED ON
8 WRITTEN TESTIMONY. THERE'S NO NEED FOR
9 CROSS-EXAMINATION.

10 AND SO IT'S REALLY UP TO YOU, YOUR HONOR,
11 BUT MY EXPERIENCE HAS BEEN THAT HAVING WITNESSES
12 DOESN'T REALLY ADD ANYTHING. IT JUST TAKES MORE
13 TIME.

14 IT'S REALLY UP TO YOU, YOUR HONOR,
15 OBVIOUSLY TO -- ABOUT HOW YOU WANT TO PROCEED, BUT
16 I DON'T THINK THERE'S ANY -- HAVING DONE THIS A
17 NUMBER OF TIMES, I DON'T THINK THERE'S ANY REAL
18 VALUE OTHER THAN TAKING UP EVERYBODY'S TIME AND
19 EXPENSE.

20 THE COURT: YOU THINK IT'S REALLY GOING
21 TO COME DOWN TO CREDIBILITY?

22 MR. TUBACH: I THINK IT'S VERY USEFUL FOR
23 THE COURT TO HEAR FROM THE EXPERTS LIVE, BUT I
24 DON'T WANT TO GET SIDETRACKED ON THAT.

25 I HAVE ANOTHER SUGGESTION.

1 THE COURT: WHAT'S THAT?

2 MR. TUBACH: THAT THE PLAINTIFFS GET TWO
3 WEEKS AND WE KEEP OUR FIVE WEEKS.

4 THE COURT: SO THEY GET UNTIL, WHAT?

5 MR. TUBACH: JULY 12TH.

6 THE COURT: JULY THE 12TH.

7 MR. TUBACH: AND THEN WE KEEP OUR FIVE
8 WEEKS AND THEN THE COURT CAN KEEP ITS SEPTEMBER 20
9 HEARING. WE DON'T HAVE TO TRY TO MESS UP THE
10 COURT'S SCHEDULE.

11 MR. SAVERI: I'M SORRY. COULD YOU -- I
12 DIDN'T FOLLOW WHAT YOUR SUGGESTION WAS.

13 MR. TUBACH: INSTEAD OF GETTING A THREE
14 WEEK EXTENSION ON THE CLASS CERT MOTION, THE
15 PLAINTIFFS GET TWO WEEKS, AND THEN WE KEEP OUR FIVE
16 WEEKS TO RESPOND, AND THEN WE KEEP THE REPLY AS THE
17 COURT INDICATED ON AUGUST 30TH.

18 THAT THEN MOVES THE SCHEDULE AS LITTLE AS
19 POSSIBLE AND KEEPS THE COURT'S SCHEDULE FOR THE
20 HEARING DATE ON THE 20TH OF SEPTEMBER.

21 MR. SAVERI: I --

22 THE COURT: I'M SORRY.

23 MR. SAVERI: I'M SORRY, YOUR HONOR. I
24 THINK THAT HAVING TWO WEEKS FOR THE REPLY ON THIS
25 IS NOT WHAT WE NEED.

1 THE COURT: UM-HUM.

2 MR. SAVERI: THAT'S THE PROBLEM THAT --
3 WITH WHAT MR. TUBACH SUGGESTS. IT TAKES TIME OUT
4 OF OUR REPLY AND IT JUST KIND OF MOVES TIME IN THE
5 SCHEDULE FROM OUR OPENING BRIEF AND TAKES IT AWAY
6 FROM THE REPLY.

7 MR. TUBACH: I KEPT THE OPPOSITION AND
8 REPLY JUST AS THE COURT HAD INDICATED.

9 MR. SAVERI: I UNDERSTAND THAT.

10 MR. TUBACH: IT'S JUST MOVING UP THE --

11 THE COURT: THE OTHER THING I COULD DO
12 WOULD BE TO SQUEEZE YOU ALL ON EXPERT DISCOVERY.
13 THERE'S MORE ROOM IN THERE TO REDUCE.

14 MR. SAVERI: I'M SORRY, YOUR HONOR, AFTER
15 THE CLASS CERTIFICATION HEARING?

16 THE COURT: UM-HUM. THERE'S SOME -- A
17 LITTLE BIT OF CUSHION IN THERE.

18 MR. TUBACH: THERE'S NOT REALLY ANY
19 CUSHION FOR US, YOUR HONOR. WE'RE THREE WEEKS WITH
20 THE CHRISTMAS HOLIDAYS IN THAT TIME PERIOD. THAT
21 SORT OF DOES US --

22 THE COURT: I SEE THAT.

23 MR. SAVERI: AND TO BE FAIR, THAT'S WHY
24 THAT GAP IS IN THERE.

25 BUT I DO THINK THERE IS SOME TIME IN

1 THERE, THOUGH, YOUR HONOR, BECAUSE RIGHT NOW
2 THERE'S -- FROM SEPTEMBER 20TH TO JANUARY 25,
3 THAT'S 90 DAYS. I'M NOT -- I THINK WE CAN COLLAPSE
4 THAT WITHOUT RUINING EVERYBODY'S HOLIDAY. AND
5 WE'RE ONLY TALKING ABOUT A COUPLE WEEKS RIGHT NOW.

6 (PAUSE IN PROCEEDINGS.)

7 THE COURT: ALL RIGHT. HERE'S ONE
8 PROPOSAL. WHAT IF WE SQUEEZE -- SO THE FACT
9 DISCOVERY CUT OFF WAS DECEMBER 28TH; INITIAL EXPERT
10 REPORTS JANUARY 11TH, WHICH MEANS THE HOLIDAYS ARE
11 NOT GOING TO BE GOOD; JANUARY 25TH FOR REBUTTAL
12 REPORTS; EXPERT DISCOVERY CUT OFF, FEBRUARY 8TH;
13 DISPOSITIVE MOTIONS AND DAUBERT MOTIONS FILED
14 FEBRUARY 21; THE SUMMARY JUDGMENT, DAUBERT HEARING
15 WOULD BE MARCH 28TH; AND WE WOULD KEEP THE PRETRIAL
16 CONFERENCE ON MAY 15TH; AND THE JURY TRIAL ON
17 JUNE 10TH.

18 AND I --

19 MR. SAVERI: YOUR HONOR, I --

20 THE COURT: -- WOULD HOPEFULLY BE ABLE TO
21 GIVE YOU AN ORDER ON DAUBERT AND SUMMARY JUDGMENT
22 WITHIN A MONTH OF THAT HEARING, SO YOU WOULD HAVE
23 IT BEFORE THE PRETRIAL CONFERENCE, BUT PERHAPS NOT
24 IN ADVANCE OF -- YOUR MEET AND CONFER DEADLINE IS
25 21 DAYS BEFORE THE PRETRIAL CONFERENCE.

1 MR. SAVERI: I'M SORRY. CAN I JUST
2 KEEP -- SO YOU SAID DECEMBER -- FACT DISCOVERY
3 WOULD BE THE END OF DECEMBER, I THINK YOU SAID THE
4 28TH, 2012?

5 THE COURT: YES.

6 MR. SAVERI: AND DID YOU MOVE THE INITIAL
7 EXPERT REPORT?

8 THE COURT: YES, JANUARY 11TH.

9 MR. SAVERI: AND THEN THE EXPERT --

10 THE COURT: REBUTTAL JANUARY 25, TWO
11 WEEKS LATER.

12 MR. SAVERI: FOR THE DISCOVERY CUT OFF,
13 THE EXPERT DISCOVERY CUT OFF?

14 THE COURT: NO. EXPERT DISCOVERY CUT OFF
15 WOULD BE FEBRUARY 8TH.

16 MR. SAVERI: GOT IT.

17 THE COURT: SO JANUARY 11, JANUARY 25,
18 FEBRUARY 8, FEBRUARY 21, MARCH 28, MAY 15,
19 JUNE 10TH.

20 MR. SAVERI: AND THEN THE REST STAYS THE
21 SAME?

22 THE COURT: THE REST STAYS THE SAME.

23 MR. SAVERI: AND THEN THE CLASS CERT
24 WOULD MOVE TO JULY 19?

25 THE COURT: OKAY. SO THEN LET'S MOVE,

1 THEN, THE CLASS CERT --

2 MR. SAVERI: I'M SORRY, YOUR HONOR.

3 THE COURT: YEAH, YOU COULD GET --

4 MR. SAVERI: I JUST DON'T KNOW.

5 THE COURT: WELL, I HADN'T WORKED IT OUT.
6 THAT'S FINE.

7 MR. TUBACH: EVEN JULY 12, WHICH IS A TWO
8 WEEK EXTENSION, IS SIX WEEKS FROM TODAY.

9 MS. DERMODY: AND MOVE THE SCHEDULE OUT
10 FOUR WEEKS.

11 (PAUSE IN PROCEEDINGS.)

12 THE COURT: WHAT DATES -- I GUESS WE'RE
13 STILL RUNNING INTO THE SAME ISSUE WITH EARLY
14 OCTOBER.

15 WHAT ABOUT OCTOBER 11?

16 MR. SAVERI: FOR WHAT, YOUR HONOR?

17 THE COURT: OH, I'M SORRY. I'M ASKING
18 MS. PARKER BROWN.

19 MR. SAVERI: I'M SORRY.

20 THE CLERK: IT'S THE LAST DAY FOR
21 DISPOSITIVE MOTIONS ON SIBULA VERSUS DEPARTMENT OF
22 TREASURY, SIBULA VERSUS --

23 THE COURT: WHAT'S THE CASE NUMBER? WHAT
24 DIGIT IS THAT ENDING? WHAT'S THE LAST DIGIT?

25 THE CLERK: IT'S A 3.

1 THE COURT: OH, OKAY, THAT'S FINE. AND
2 THAT'S THE ONLY THING?

3 THE CLERK: YEAH.

4 THE COURT: OH, OKAY.

5 ALL RIGHT. OKAY. HERE'S ANOTHER
6 PROPOSAL. SORRY THIS IS TAKING SO LONG.

7 OKAY. I'LL GIVE PLAINTIFFS UNTIL
8 JULY 26TH, SO THEY GET A FOUR WEEK EXTENSION;
9 AUGUST 30TH, SO YOU WOULD KEEP YOUR FIVE WEEKS FROM
10 THE DEFENSE SIDE; AND THEN PLAINTIFFS WOULD GET
11 THREE WEEKS UNTIL SEPTEMBER 20TH FOR THE REPLY; THE
12 HEARING WILL BE OCTOBER 11TH.

13 WHEN IS THE ABAXIS TRIAL OVER? IS IT
14 OVER THAT WEEK OF OCTOBER THE 8TH OR IS IT STILL
15 GOING?

16 THE CLERK: IT LOOKS LIKE IT'S SCHEDULED
17 TO END ON POSSIBLY THE 9TH. I DON'T SHOW IT ON THE
18 12TH.

19 THE COURT: OH, OKAY. THAT'S GOOD.

20 THE CLERK: BUT ORACLE MAY START ON THE
21 9TH.

22 THE COURT: OKAY.

23 THE CLERK: AND THEN THERE'S A CRIMINAL,
24 CHERYL SAVAGE.

25 THE COURT: I KNOW. THAT'S OKAY. THAT

1 WOULDN'T INVOLVE ANY OF THAT.

2 OKAY. SO WHAT ABOUT THAT, JULY 26TH,
3 AUGUST 30TH, SEPTEMBER 20TH, OCTOBER 11TH?

4 SO THEN YOU WOULD STILL GET NOT QUITE TWO
5 MONTHS FOR FACT DISCOVERY BEFORE THE CUT OFF.

6 MR. TUBACH: FACT DISCOVERY WILL BE GOING
7 ON WHILE CLASS CERT IS HAPPENING?

8 THE COURT: YEAH.

9 MR. TUBACH: SO THERE'S NO STAY ON
10 DISCOVERY.

11 I GUESS WHAT I WOULD ASK, IF THE COURT IS
12 NOW INCLINED TO GIVE THEM FOUR WEEKS, I WOULD ASK
13 THE COURT IF YOU WOULD GIVE THEM THREE AND GIVE US
14 AN EXTRA WEEK ON THE OPPOSITION.

15 FIVE WEEKS IS TIGHT FOR US. IF THEY'RE
16 TAKING WHAT WILL NOW BE MANY, MANY MONTHS TO GET
17 THIS CLASS CERT MOTION PULLED TOGETHER, WE COULD
18 SURE USE THE WEEK.

19 THE COURT: DO YOU WANT TO TAKE IT FROM
20 THEIR MOTION OR THEIR REPLY?

21 MR. TUBACH: WHEREVER YOU WANT TO TAKE
22 IT, YOUR HONOR.

23 MR. SAVERI: JUST SO WE'RE CLEAR, YOUR
24 HONOR, I APPRECIATE THAT CLARIFICATION. I THINK IT
25 WOULD BE -- I WOULD PREFER, IF WE'RE GOING TO LOSE

1 A WEEK, TO LOSE -- TO HAVE OUR OPENING BRIEF BE DUE
2 EARLIER AND GIVE US MORE TIME ON THE REPLY, YOUR
3 HONOR. IF I WERE FORCED TO CHOOSE, THAT'S THE WAY
4 I WOULD MAKE THAT CHOICE.

5 THE COURT: OKAY. ALL RIGHT. SO THEN
6 YOU WOULD BE FILING ON JULY 19TH, WHICH IS A THREE
7 WEEK EXTENSION.

8 MR. SAVERI: YEAH.

9 THE COURT: ALL RIGHT. SO JULY 19TH IS
10 THE MOTION; AUGUST 30TH IS THE BRIEF CONSOLIDATED
11 OPPOSITION --

12 MR. SAVERI: DID YOU SAY BRIEF, YOUR
13 HONOR?

14 THE COURT: I DID.

15 MR. SAVERI: I JUST WANTED TO UNDERLINE
16 THAT.

17 THE COURT: I KNOW. 25 PAGE MAX ON THE
18 OPENING AND THE OPPOSITION; AND THEN 15 MAX ON THE
19 REPLY, WHICH WILL BE DUE SEPTEMBER 20TH. OKAY?

20 SO THAT MEANS YOU'LL KEEP THREE WEEKS ON
21 THE REPLY.

22 MR. TUBACH: AND THEN ALL OF THE OTHER
23 DATES --

24 THE COURT: AND THEN EVERYTHING --

25 MR. TUBACH: EVERYTHING ELSE STAYS?

1 THE COURT: NO. IT'LL BE WHAT I MOVED IT
2 TO. DECEMBER 28TH FOR A FACT DISCOVERY CUT OFF;
3 JANUARY 11TH FOR INITIAL EXPERT REPORTS;
4 JANUARY 25TH FOR REBUTTAL; EXPERT DISCOVERY CUT OFF
5 OF FEBRUARY 8TH; DAUBERT AND SUMMARY JUDGMENT
6 MOTIONS FEBRUARY 21; DAUBERT AND SUMMARY JUDGMENT
7 HEARING ON MARCH 28TH; PRETRIAL CONFERENCE MAY 15TH
8 AT 2:00 O'CLOCK, WHICH IS THE SAME AS BEFORE; AND
9 THEN JUNE 10TH TRIAL, SAME AS BEFORE.

10 ANYONE WANT TO BE HEARD ON THOSE DATES?

11 WE'LL HAVE A CMC HERE ON JULY 25TH AT
12 2:00 O'CLOCK.

13 THE SUBSTANTIAL COMPLETION OF DOCUMENT
14 PRODUCTION WILL REMAIN ON JUNE 15TH.

15 MR. TUBACH: YOU KNOW, YOUR HONOR, I
16 GUESS I WOULD BE INCLINED TO JUST LEAVE -- IF THE
17 COURT'S MOVING THE SCHEDULE SO WE HAVE THE CLASS
18 CERT HEARING ON OCTOBER 11TH, MY PROPOSAL WOULD BE,
19 SUBJECT TO BEING OVERRULED BY MY BRETHREN AND
20 SISTREN, WOULD BE TO KEEP ALL THE OTHER DATES IN
21 PLACE. SO WE DON'T MOVE ANYTHING ELSE.

22 WE HAVE THE CLASS CERT HEARING ON
23 OCTOBER 11TH, AND WE'LL SUFFER THE REST OF IT,
24 BECAUSE FRANKLY, IT'S GOING TO BE HARD.

25 WHAT I'M THINKING ABOUT, AMONG OTHER

1 THINGS, IS WE HAVE A --

2 THE COURT: I THINK YOU COULD USE SOME
3 MORE SISTERS OVER THERE, TOO.

4 (LAUGHTER.)

5 MR. TUBACH: THANK YOU, YOUR HONOR. I DO
6 APPRECIATE THAT.

7 THE COURT: I WAS JUST JOKING. BUT
8 SERIOUSLY, TOO.

9 MR. TUBACH: AND I TAKE THAT SERIOUSLY.

10 THE COURT: OKAY.

11 MR. TUBACH: MARCH 28TH, YOUR HONOR, FOR
12 A HEARING ON DISPOSITIVE MOTIONS WITH A TRIAL DATE
13 ON JUNE 10 -- THE COURT, I KNOW, HAS A VERY FULL
14 DOCKET. IT'S GOING TO TAKE THE COURT SOME TIME TO
15 GET THOSE RULINGS OUT.

16 THE COURT: I'M TOTALLY FINE WITH KEEPING
17 THE REST OF THE CALENDAR THE SAME, BUT ARE YOU
18 OKAY, THEN, WITH KEEPING FACT DISCOVERY CUT OFF OF
19 NOVEMBER 30TH?

20 MR. TUBACH: I'D PREFER TO LIVE WITH THAT
21 THAN TO TRY AND PUSH EVERYTHING BACK TOWARDS THE
22 TRIAL.

23 THE COURT: ALL RIGHT. THAT'S FINE, JUST
24 UNDERSTANDING THAT I MAY TAKE SOME TIME TO ISSUE
25 THAT CLASS CERT MOTION.

1 MR. TUBACH: I UNDERSTAND THAT.

2 THE COURT: BECAUSE THAT'S OCTOBER 11TH,
3 SO THAT'S REALLY SQUEEZING THAT.

4 MR. TUBACH: I UNDERSTAND. IF WE'RE
5 GOING TO SQUEEZE, I PREFER TO SQUEEZE THERE THAN AT
6 THE BACK END.

7 MR. SAVERI: YOUR HONOR, WE'RE FINE
8 EITHER WAY.

9 IT SEEMS TO ME WHAT WE'RE TALKING ABOUT
10 NOW IS HOW IT AFFECTS YOUR SCHEDULE, SO I'LL --
11 HOWEVER YOU WANT TO DO IT, WE'LL DEAL WITH IT.

12 THE COURT: I'M GOING TO DEFER TO YOU
13 ALL. I JUST WANT TO --

14 MR. SAVERI: I'M FINE WITH --

15 THE COURT: I WANT TO LEAVE THE TRIAL
16 DATE THE SAME. SO YOU ALL PICK.

17 MR. TUBACH: IF WE COULD DO THE CLASS
18 CERT SCHEDULE THE WAY THE COURT'S INDICATED AND
19 KEEP ALL OTHER DATES THE WAY THEY ARE, I THINK
20 THAT'S PROBABLY FINE.

21 MR. SAVERI: YOUR HONOR, I CAN'T BE
22 OVERRULED BY THEM, BUT I THINK IT MAKES SENSE FOR
23 US, TOO, IF IT'S ACCEPTABLE WITH YOU.

24 THE COURT: OKAY.

25 THE CLERK: JUDGE, DID YOU MENTION A

1 JULY 25TH CMC? BECAUSE WE HAVE A LOT THAT DAY.

2 THE COURT: OH, DO WE?

3 THE CLERK: YES.

4 THE COURT: OKAY.

5 THE CLERK: INCLUDING JUAN HAS A LOT.

6 MR. TUBACH: I'M SORRY, JULY --

7 THE COURT: OH, I KNOW PROBABLY WHY.

8 MR. TUBACH: I DON'T THINK THERE'S A

9 JULY --

10 THE COURT: IT'S ALREADY JUNE --

11 MR. TUBACH: I DON'T THINK WE HAVE

12 ANYTHING ON IN JULY.

13 THE COURT: OH, NO, NO. I WAS GOING TO
14 SET A FURTHER CMC.

15 MR. TUBACH: OH.

16 MR. SAVERI: DO YOU WANT TO GIVE US MORE
17 TIME AND PUSH IT INTO -- PUSH IT INTO AUGUST?

18 DO YOU WANT TO DO IT IN JULY? IT DOESN'T
19 MATTER.

20 MR. TUBACH: I'M FINE EITHER WAY. IF THE
21 COURT WANTS TO SET SOMETHING, IT PROBABLY MAKES
22 SENSE TO SET IT AFTER THEY FILE THEIR CLASS CERT
23 MOTION AS THE NEXT EVENT.

24 THE COURT: THEY'LL FILE ON THE 19TH NOW
25 PER THE NEW SCHEDULE, SO THAT WILL BE SIX DAYS

1 AFTER.

2 BUT IF YOU WANTED TO COME IN IN AUGUST,
3 THAT'S OKAY, TOO.

4 THE CLERK: AUGUST 29TH MIGHT WORK.

5 THE COURT: WHAT WOULD YOU LIKE?

6 MR. TUBACH: EARLY AUGUST. YEAH, SORT OF
7 EARLY AUGUST SOMETIME, MAYBE THE FIRST COUPLE WEEKS
8 IN AUGUST IF THE COURT HAS IT.

9 THE COURT: ALL RIGHT. LET ME HEAR.

10 THE CLERK: ACTUALLY, THE 1ST MIGHT WORK.
11 YOU ONLY WANTED ONE FOR JUAN ON THAT DATE, BUT THE
12 ONLY ONE HE HAD WAS A 0, WHICH IS NOW ASHER'S.

13 THE COURT: ON WHICH DATE?

14 THE CLERK: ON AUGUST 1ST. HE HAS NONE.

15 THE COURT: THAT WOULD NOT BE A GOOD DATE
16 BECAUSE THAT'S KAREN'S FIRST WEEK. WHAT DO WE HAVE
17 THE NEXT -- WHAT'S THE NEXT DATE? AUGUST 8TH OR
18 15TH? HOW DO THOSE LOOK?

19 THE CLERK: THE 15TH WE'RE NOT DOING
20 CALENDAR BECAUSE YOU'RE DOING --

21 THE COURT: THAT'S RIGHT. WE'RE GOING TO
22 DO THE TRIAL.

23 THE CLERK: AND I THINK --

24 THE COURT: HOW DOES THE 22ND OR THE 8TH
25 LOOK?

1 THE CLERK: WE'VE GOT TWO ON THE 8TH.

2 THE COURT: ALL RIGHT.

3 THE CLERK: ON THE 1ST, YOU WANTED JUST
4 ONE, AND THERE'S NONE RIGHT NOW.

5 THE COURT: I THINK WE BETTER DO THE --
6 WHAT ABOUT THE 22ND?

7 THE CLERK: THE 22ND, IT LOOKS LIKE HE
8 HAS THREE.

9 THE COURT: I MEAN, IF YOU DON'T FORESEE
10 ANY MORE ISSUES, I WOULD THINK MOST OF THE
11 DISCOVERY ISSUES WILL, BY THAT POINT, HOPEFULLY BE
12 LARGELY SOMEWHAT RESOLVED AND YOU COULD EVEN COME
13 IN IN SEPTEMBER.

14 I MEAN, I NORMALLY HAVE PEOPLE COME IN
15 EVERY 90 DAYS. IF THERE'S NOT ANYTHING SUPER
16 PRESSING, WE COULD PUSH IT.

17 MR. TUBACH: THAT'S FINE, YOUR HONOR.

18 THE COURT: WHAT ABOUT SEPTEMBER 5TH?

19 MR. SAVERI: SO OUR -- EXCUSE ME, YOUR
20 HONOR. SO RIGHT NOW OUR DECEMBER -- WE HAVE A
21 DISCOVERY CUT OFF ON DECEMBER 28TH.

22 MR. TUBACH: NO, NOVEMBER 30TH.

23 THE COURT: NOVEMBER 30TH. IT'S GONE
24 BACK.

25 MR. SAVERI: I JUST WANT TO MAKE SURE WE

1 HAVE A CHANCE TO COME IN SOMETIME TO DEAL WITH ANY
2 OUTSTANDING DISCOVERY ISSUES.

3 THE COURT: OKAY.

4 MR. SAVERI: BUT I THINK THAT'S FINE.
5 I'M JUST THINKING OUT LOUD, YOUR HONOR. I
6 APOLOGIZE. I THINK SOMETIME IN SEPTEMBER IS FINE.

7 THE CLERK: THE 12TH, SEPTEMBER 12TH?

8 THE COURT: WOULD SEPTEMBER 12TH BE
9 ENOUGH TIME?

10 MR. TUBACH: THAT WOULD BE FINE FOR US.

11 MR. SAVERI: YEAH.

12 THE COURT: ALL RIGHT. SO THEN LET'S DO
13 OUR NEXT CMC SEPTEMBER 12TH OF 2012.

14 NOW, IF THERE ARE A LOT OF DISCOVERY
15 DISPUTES, I'M INCLINED -- I'VE SPOKEN WITH
16 JUDGE LLOYD AND JUDGE GREWAL AND THEY'VE, AMONGST
17 THEMSELVES, AGREED THAT JUDGE GREWAL WILL DO THE
18 DISCOVERY ON THIS.

19 IF IT'S RELATIVELY SMALL, I CAN DO IT
20 MYSELF.

21 BUT IF THIS GETS TO BE VERY, VERY HEAVY
22 AND INTENSE AND EVERYONE IS ASKING FOR EXPEDITED
23 HEARINGS, I'D LIKE TO SEND THIS TO JUDGE GREWAL.

24 MR. SAVERI: OKAY.

25 MR. TUBACH: WE'VE ONLY HAD TWO SO FAR

1 THAT HAVE GONE TO JUDGE LLOYD, SO WITH ANY LUCK WE
2 WON'T HAVE ANY MORE.

3 THE COURT: AND I THINK I'VE RULED ON
4 BOTH OF THEM THAT HAVE GONE TO JUDGE LLOYD ANYWAY.

5 MR. TUBACH: YOU HAVE. YOU HAVE. THESE
6 CMC'S HAVE TENDED TO CLEAR THOSE UP.

7 THE COURT: WELL, I'M NOT SURE -- WHAT
8 WILL CREATE THE INCENTIVE FOR YOU ALL TO WORK
9 THINGS OUT? GOING OR STAYING?

10 SO WHATEVER WILL MAKE MORE MEET AND
11 CONFERS BE PRODUCTIVE AND RESOLVE YOUR DISCOVERY
12 DISPUTES, THAT'S WHAT I WANT TO DO.

13 SO --

14 MR. TUBACH: WELL, I THINK KEEPING IT THE
15 WAY IT IS NOW HAS WORKED REASONABLY WELL.

16 WE'LL BE BACK BEFORE THE COURT ON
17 SEPTEMBER 12TH. IF THINGS ARE HAPPENING BEFORE
18 THEN THAT NEED FURTHER AIR TIME, I THINK THE COURT
19 CAN ALWAYS MAKE A DECISION THEN ABOUT WHAT TO DO.

20 MR. SAVERI: I TEND TO AGREE WITH
21 MR. TUBACH.

22 THE COURT: OKAY. THAT'S FINE.

23 I GUESS IF THERE BECOMES A PROBLEM YOU
24 CAN ASK FOR AN EARLIER DATE THAN SEPTEMBER TO COME
25 IN.

1 MR. TUBACH: SURE.

2 MR. SAVERI: I THINK THAT'S FINE.

3 THE COURT: BUT IF IT'S LOOKING LIKE IT'S
4 VERY NUMEROUS AND UGLY, THEN I MIGHT REFER IT OUT.

5 MR. SAVERI: THAT'S FINE.

6 MR. TUBACH: WHAT TIME ON SEPTEMBER 12TH,
7 YOUR HONOR?

8 THE COURT: THAT'LL BE AT 2:00 O'CLOCK.
9 THAT'S A WEDNESDAY AT 2:00 O'CLOCK DURING THE CMC
10 CALENDAR.

11 MR. TUBACH: YEAH, OKAY.

12 THE COURT: OKAY.

13 MR. TUBACH: THANK YOU, YOUR HONOR.

14 THE COURT: ANYTHING ELSE WE NEED TO DO
15 TODAY?

16 MR. TUBACH: NOT FROM OUR POINT OF VIEW.
17 THANK YOU.

18 MS. DERMODY: YOUR HONOR, JUST ONE
19 HOUSEKEEPING MATTER.

20 THE COURT: YES.

21 MS. DERMODY: THERE'S AN ADMINISTRATIVE
22 MOTION TO AMEND THE PRETRIAL ORDER NUMBER 1 FOR THE
23 APPOINTMENT OF INTERIM CO-LEAD COUNSEL. THAT'S
24 BEEN SUBMITTED TO YOUR HONOR. THAT'S UNOPPOSED
25 FROM THE DEFENDANTS.

1 THE COURT: OH, I WILL SIGN THAT IF I
2 HAVEN'T SIGNED THAT ALREADY.

3 MS. DERMODY: THANK YOU, YOUR HONOR.

4 THE COURT: THAT'S FINE. WHAT ELSE?
5 ANYTHING ELSE?

6 LET ME JUST DOUBLE CHECK MY NOTES HERE.
7 I THINK WE GOT EVERYTHING ELSE.

8 NOW, OBVIOUSLY THE DEFENDANTS, TO THE
9 EXTENT YOU HAVE NOT FINISHED PRODUCING YOUR STOCK
10 OPTIONS DATA, OVERTIME COMPENSATION DATA, EMPLOYEE
11 STATUS CHANGE DATA, THAT NEEDS TO BE DONE, AND IF
12 IT'S NOT DONE BY JUNE 15TH, THEN THERE WILL BE
13 CONSEQUENCES.

14 IDEALLY I WANT EVERYONE TO COMPLETE BY
15 THE 8TH AND THEN DO CLEAN UP THE WEEK OF THE 15TH.

16 MR. TUBACH: WE'RE WORKING VERY HARD TO
17 MEET THE COURT'S DEADLINES.

18 THE CMC STATEMENT WAS THE FIRST TIME WE
19 HAD HEARD FROM THE PLAINTIFFS THAT THEY WANTED
20 OVERTIME DATA. THIS IS NOT SOMETHING THAT'S COME
21 UP BEFORE IN THE WEEKS AND WEEKS OF MEET AND
22 CONFERS THAT WE HAD WITH THE PLAINTIFFS.

23 FRANKLY, I HAVEN'T HEARD WHY THE
24 PLAINTIFFS THINK THEY NEED OVERTIME DATA TO, TO GET
25 A MODEL TOGETHER TO SHOW HOW THERE'S COMMON IMPACT

1 THAT THEY ARE GOING TO PROVE ON A CLASS-WIDE BASIS.
2 I'M NOT SURE HOW THOSE TWO INTERSECT AT ALL.

3 WE ARE COMFORTABLE THAT -- WE ARE
4 COMFORTABLE. WE'RE WORKING HARD TO MEET THAT
5 JUNE 15TH DEADLINE AND WE'RE COMMITTED TO MEETING
6 IT.

7 THE COURT: AND YOU ARE GOING TO PRODUCE
8 OVERTIME COMPENSATION DATA?

9 MR. TUBACH: WELL, THIS IS THE FIRST WE
10 EVER HEARD OF THIS. SO UNTIL THE CMC STATEMENT ON
11 FRIDAY, WE HAD NEVER EVEN HEARD THAT THE PLAINTIFFS
12 EVERYONE WANTED OVERTIME DATA.

13 THE COURT: SO WHY DO YOU NEED THAT? HOW
14 IS THAT RELEVANT?

15 MS. DERMODY: WELL, YOUR HONOR, I
16 THINK -- IF I MAY, I THINK THE EXPERTS WANT TO MAKE
17 SURE THEY HAVE A COMPLETE COMPENSATION PICTURE AND
18 THEY WANT TO MAKE SURE THEY'RE COMPARING APPLES TO
19 APPLES.

20 SO IF THERE'S COMPENSATION DATA THAT IS
21 OVERTIME DATA THAT IS IMPACTING WAGES, THEN WE WANT
22 TO KNOW THAT.

23 THE COURT: THAT SEEMS RELEVANT. IF THEY
24 NEED AN ECONOMIST TO FIGURE OUT WHAT THE DIFFERENCE
25 IN COMPENSATION WOULD BE ABSENT ANY ALLEGED

1 CONSPIRACY, I THINK THEY NEED THAT.

2 MR. TUBACH: YOUR HONOR, THIS IS
3 SOMETHING THEY SHOULD HAVE HAMMERED OUT THREE
4 MONTHS AGO WHEN WE WERE SITTING DOWN TALKING TO
5 THEM ENDLESSLY ABOUT HOW MANY FIELDS OF DATA THEY
6 NEEDED.

7 WE HAVE NOW PRODUCED 12 YEARS -- 11 YEARS
8 WORTH OF DATA FOR ALL OF OUR EMPLOYEES. THAT'S
9 166,000 EMPLOYEES AMONG ALL SEVEN OF US.

10 TO GO BACK NOW AND GET OVERTIME DATA
11 BECAUSE, BECAUSE THEIR EXPERT SAYS, "YOU KNOW, THAT
12 WOULD BE A GREAT THING TO HAVE," MAYBE IN THE GRAND
13 SCHEME OF THINGS, SURE, IF THEY'D ASKED FOR IT
14 THREE MONTHS AGO, THAT'S SOMETHING WE COULD HAVE
15 DONE.

16 TO COME IN NOW AND SAY, "OH, BY THE WAY,
17 WE'D LIKE TO SEE YOUR OVERTIME DATA," WHERE WAS
18 THAT THREE MONTHS AGO? THAT'S JUST NOT REASONABLE.

19 THIS IS WHY WE SPENT ALL THIS TIME
20 NEGOTIATING WITH THE PLAINTIFFS OVER EXACTLY WHAT
21 FIELDS WE WOULD PRODUCE.

22 THE COURT: WAS YOUR STATEMENT THE FIRST
23 TIME YOU REQUESTED THAT ON JUNE 1ST?

24 MS. DERMODY: I THINK WE ASKED FOR TOTAL
25 COMPENSATION, YOUR HONOR.

1 AND ONCE YOU GET DATA, YOU REALIZE WHAT'S
2 MISSING. I MEAN, SOMETIMES THE PARTIES THINK
3 THEY'RE ON THE SAME PAGE, BUT WHEN YOU GET DOWN TO
4 A FILE LEVEL ANALYSIS, YOU REALIZE THAT THERE ARE
5 UNANSWERED QUESTIONS.

6 MR. TUBACH: FIELD BY FIELD BY --

7 THE COURT: BUT 106,000 EMPLOYEES, THAT'S
8 A LOT OF INFORMATION. IS THERE ANY WAY YOU CAN
9 NARROW YOUR REQUEST, BECAUSE THIS DOES -- FOR THIS
10 LARGE A GROUP, IT REALLY SEEMS OVERLY BURDENSOME TO
11 BE REQUESTING THIS AMOUNT OF INFORMATION FROM
12 106,000 EMPLOYEES WHEN EVENTUALLY, ON JULY 19TH,
13 YOU MIGHT BE DUMPING THE VAST MAJORITY OF THESE
14 EMPLOYEES FROM YOUR MOTION.

15 MR. SAVERI: YOUR HONOR, I THINK YOUR
16 SUGGESTION IS WELL TAKEN, AND I'M FINE WITH GOING
17 BACK AND TRYING TO DETERMINE WHETHER THERE IS A
18 LESS VOLUMINOUS SOURCE OF THAT INFORMATION OR
19 ANOTHER WAY OF GETTING TOTAL COMPENSATION. I'M
20 FINE WITH DOING THAT.

21 MR. TUBACH: YOUR HONOR, THEY GAVE US
22 FIVE PAGES OF DATA THAT THEY WANTED US TO PULL
23 TOGETHER, AND WHAT THEY ASKED ABOUT FOR
24 COMPENSATION WAS DESCRIPTION OF COMPENSATION
25 PACKAGES FOR EACH EMPLOYEE, FOR EMPLOYEES OF EACH

1 TITLE, REGULAR SALARY, BONUSES, STOCK OPTIONS,
2 BENEFITS, ET CETERA.

3 THEY DIDN'T ASK FOR OVERTIME DATA. THIS
4 IS WHY IT'S -- WHY WE DID WHAT WE DID, WHICH IS NOT
5 JUST WILLY NILLY PRODUCE OUR STUFF, BUT TO GO TO
6 THE PLAINTIFFS AND REALLY SIT DOWN AND HAMMER OUT
7 WHAT IT WAS THAT WE WERE GOING TO PULL TOGETHER.

8 I CANNOT GO BACK TO MY CLIENT AND SAY, "I
9 KNOW I TOLD YOU IT WAS OVER, BUT IT'S NOT OVER.
10 I'VE GOT TO GO BACK AND GET YOU TO DO EVERYTHING
11 FOR ANOTHER 11 YEARS OF PEOPLE TO SEE IF SOMEBODY
12 GOT PAID OVERTIME."

13 AND REMEMBER, WE'RE TALKING HERE ABOUT
14 SALARIED EMPLOYEES, THE VAST MAJORITY OF WHOM ARE
15 GOING TO BE EXEMPT FROM OVERTIME ANYWAY.

16 WE HAVE TO NOW PICK THROUGH AND FIGURE
17 OUT EXACTLY HOW MUCH EVERYONE WAS COMPENSATED. WE
18 HAVE NOT PRODUCED COMPENSATION DATA ITSELF. WE
19 HAVEN'T PRODUCED PAYROLL DATA. WE'VE PRODUCED
20 SALARIES. WHAT ARE THEIR SALARIES?

21 IF SOMEONE TOOK THREE MONTHS OFF BECAUSE
22 THEY HAD A CHILD OR THEY'RE ON PATERNITY LEAVE,
23 THAT'S NOT GOING TO BE REFLECTED IN THE DATA.

24 WE PRODUCED COMPENSATION DATA, WHAT IS
25 THEIR, AS THE PLAINTIFFS PUT IT, REGULAR SALARY,

1 BONUSSES, STOCK OPTIONS.

2 THAT'S WHAT WE PRODUCED.

3 MR. SAVERI: YOUR HONOR, I AM FINE WITH
4 TALKING WITH MR. TUBACH ABOUT THIS AND ADDRESSING
5 THAT VERY POINT.

6 I THINK THE SITUATION WE FOUND OURSELVES
7 IN IS THAT AS WE WENT THROUGH THE DATA, IT WAS
8 SOMETHING THAT WE WANTED TO MAKE SURE THAT WE HAD
9 ASKED FOR AND NAILED DOWN, AND MR. TUBACH --

10 THE COURT: WHY DO YOU NEED IT FOR 11
11 YEARS IF YOUR CLASS PERIOD IS, AT MOST, FIVE?

12 MR. SAVERI: BECAUSE, I MEAN, WE ASKED --

13 THE COURT: I MEAN, TALK ABOUT BURDENSOME
14 AND HARASSING. I ALMOST -- ALL THE ARGUMENTS YOU
15 MADE ABOUT WHY YOU SHOULDN'T GET CURRENT AND FORMER
16 EMPLOYEES OF THE FIVE LEAD PLAINTIFFS, THIS IS
17 BURDENSOME AND HARASSING, 106,000 EMPLOYEES, YOU
18 WANT 11 YEARS OF --

19 MR. TUBACH: 160.

20 THE COURT: -- INFORMATION, YOU'RE
21 REQUESTING IT NINE DAYS FROM THE SUBSTANTIAL
22 COMPLETION DEADLINE?

23 MR. SAVERI: YOUR HONOR, WE JUST WANTED
24 TO MAKE SURE THAT WE DID -- THAT WE WERE CAREFUL.

25 AND IF WE DIDN'T ASK FOR IT IN THE

1 BEGINNING, PERHAPS WE SHOULD HAVE.

2 BUT WE LEARNED MORE AS WE WENT ALONG AND
3 WE -- I DON'T HAVE ANY OTHER EXPLANATION OTHER THAN
4 WE WANTED TO GET AS MUCH -- WE WANTED TO MAKE SURE
5 THAT WE HAD ASKED THE RIGHT QUESTIONS.

6 MS. DERMODY: AND THIS IS, I THINK, THE
7 CHALLENGE WITH BIG DATA CASES, YOUR HONOR, IS IT'S
8 SORT OF AN ITERATIVE PROCESS. YOU CAN COME UP WITH
9 YOUR BEST GAME PLAN, USE THE BEST VOCABULARY YOU
10 KNOW TO DESCRIBE THE DATABASE, AND THEN YOU GET THE
11 DATABASE AND THEN THE QUESTIONS COME UP BECAUSE
12 SOMETIMES THINGS AREN'T AS YOU THOUGHT THEY WOULD
13 APPEAR.

14 AND SO THAT IS, FRANKLY, ONE OF THE
15 BIGGEST REASONS WHY WE WERE CONCERNED ABOUT THE
16 SCHEDULE IS WE'RE IN THAT ITERATIVE PROCESS OF
17 UNDERSTANDING THE DATA AND HAVING THE QUESTIONS
18 BEING ASKED FOR THE VERY FIRST TIME.

19 AND YES, IT IS LATE RELATIVE TO THE
20 SCHEDULE, BUT IT'S VERY EARLY RELATIVE TO THE
21 PRODUCTION.

22 WE GOT A HUGE DATA PRODUCTION JUST ON
23 FRIDAY. IT'S STILL ONGOING.

24 SO MORE QUESTIONS MAY COME UP BEFORE THE
25 15TH, AND IF THE PLAINTIFFS --

1 THE COURT: WELL, YOU'RE NOT GOING TO GET
2 IT BY THE 15TH. THAT'S UNREASONABLE.

3 MR. TUBACH: AND EVEN -- TO GO BACK TO
4 OUR CLIENTS NOW AND ASK THEM TO PRODUCE
5 SOMETHING -- ALL I'VE HEARD FROM MR. SAVERI IS,
6 "WELL, WE WANTED TO MAKE SURE WE AT LEAST ASKED FOR
7 STUFF."

8 I CAN'T GO BACK TO APPLE AND TELL THEM,
9 "WELL, MR. SAVERI THOUGHT OF THIS RECENTLY AND SO
10 NOW WE NOW HAVE TO GO BACK THROUGH TO OUR ENTIRE 11
11 YEARS WORTH OF EMPLOYEES FOR 160," -- IT'S
12 160,000 -- AND SAY, "YOU KNOW, WE'RE GOING TO GO DO
13 THIS ALL OVER AGAIN," THAT'S JUST NOT REASONABLE,
14 YOUR HONOR. IT'S NOT FAIR.

15 (PAUSE IN PROCEEDINGS.)

16 THE COURT: IF YOUR REQUEST IS ALL
17 160,000 EMPLOYEES, ALL 11 YEARS, ALL OVERTIME
18 COMPENSATION DATA, THEN I'M GOING TO -- IF YOU'RE
19 MAKING A MOTION FOR PROTECTIVE ORDER TO, TO QUASH
20 THAT, I'M GRANTING IT.

21 MR. TUBACH: YES.

22 THE COURT: BECAUSE THAT'S TOO MUCH.
23 IT'S TOO BURDENSOME. IT'S TOO LATE.

24 MR. TUBACH: IF THEY COME UP WITH
25 SOMETHING -- SORRY, YOUR HONOR.

1 THE COURT: THE WHOLE --

2 MR. TUBACH: IF THEY COME UP WITH
3 SOMETHING REASONABLE, WE COULD MEET AND CONFER
4 ABOUT THAT.

5 MR. SAVERI: AND I'M GLAD YOU SAID THAT
6 BECAUSE I THINK THAT'S WHAT I OFFERED A FEW MINUTES
7 AGO.

8 SO I ACCEPT AND WE SHOULD DO THAT.

9 MR. TUBACH: WITH THE PROVISO, WE'RE NOT
10 PROMISING TO PRODUCE ANYTHING.

11 UNLESS I HEAR SOME BETTER REASON ABOUT
12 WHY THEY THINK THEY NEED IT, THEY'RE NOT GOING TO
13 GET IT.

14 MR. SAVERI: TRUST ME. I HEAR WHAT
15 YOU'RE SAYING.

16 I DIDN'T TRY TO CONSTRUE WHAT MR. TUBACH
17 SAID AS A PROMISE OF ANY SORT.

18 THE COURT: WELL, I'M REALLY NOT LIKELY
19 TO ORDER IT UNLESS THE DEFENDANTS AGREE TO IT.

20 SO IT'S GOING TO HAVE TO BE VERY NARROWLY
21 TAILORED, BECAUSE 160,000 EMPLOYEES, 11 YEARS,
22 OVERTIME COMPENSATION DATA NOW WHEN THE SUBSTANTIAL
23 COMPLETION PRODUCTION DEADLINE WAS SET BACK IN
24 OCTOBER FOR JUNE 15TH, IT'S STARTING TO BE TOO
25 LATE.

1 MR. SAVERI: I HEAR YOU, YOUR HONOR.

2 THE COURT: SO IF THEY COME BACK TO ME
3 AND THEY DON'T AGREE TO IT, I MAY NOT ALLOW IT.

4 MR. SAVERI: I HEAR YOU.

5 THE COURT: OKAY. ANYTHING ELSE THAT WE
6 NEED TO DO?

7 MR. TUBACH: NOT FROM THE DEFENDANTS,
8 YOUR HONOR. THANK YOU.

9 THE COURT: OKAY. ALL RIGHT. THANK YOU
10 ALL.

11 MR. SAVERI: THANK YOU, YOUR HONOR.

12 THE COURT: I'LL SEE YOU ON
13 SEPTEMBER 12TH.

14 MS. DERMODY: THANK YOU, YOUR HONOR.

15 MR. TUBACH: THANK YOU, YOUR HONOR.

16 (WHEREUPON, THE PROCEEDINGS IN THIS
17 MATTER WERE CONCLUDED.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595